

Form No.(J)3
HEADING OF JUDGMENT ON APPEAL
District :: Nalbari

IN THE COURT OF CIVIL JUDGE :::::::::::::::::::::NALBARI

Present : Himakshi Thakuria Buragohain
Civil Judge
Nalbari.

Wednesday, the 13th day of February, 2019

TITLE APPEAL No.21/15

From the Judgment & Decree dated 04.12.13 passed by Learned Munsiff No.1,
Nalbari in Title Suit No.05/09.

Manju Rani Barkakati

-----Appellant/Defendant

- VS -

Smti. Sabya Nath

-----Respondent/Plaintiff

This appeal having been heard on 17/01/2019 in presence of :-

Advocate for the Appellants :- Md. Abdul Majid

Advocate for the Respondents :- Md. Rofiqul Islam

J U D G M E N T A N D O R D E R

1. The judgment and decree dated 04.12.13 passed by the Ld. Munsiff No.1, Nalbari i/c with T.S. No.05/09, are the subject matter under challenge in this present Civil first appeal.

2. Being highly dissatisfied and aggrieved with the Judgment delivered in T.S. No.05/09 in which the case was decreed on contest with cost vide the Judgment and Decree dated 04.12.13 passed by the Ld. Munsiff No.1, Nalbari, the plaintiff as appellant has preferred the instant appeal on the following grounds:-

G R O U N D S

- 1) That the trial court has erred in law and in facts.
- 2) That impugned judgment and decree and order is not sustainable as the plaintiff committed fraud upon the court as such the decree obtained by forgery is a nullity and liable to be set aside.
- 3) That the plaintiff/respondent claimed that she was selected in the state level selection process and found eligible for the post of Asstt. Teacher and duly appointed against a sanctioned post and posted at Bhelengimari LP School by defendant no.5 i.e. the present appellant which is totally false, unfounded and baseless.
- 4) That the plaintiff alleged that she joined her post which is also not true.
- 5) That she further added that in 2003 the plaintiff was transferred from Bhelengimari LP School to Pub Madhalbari LP School under Tamulpur Block which is also false.

- 6) That the plaintiff claimed that she again was transferred to Amrattary Primary School from Pub Madhalbari LP School on 05.10.2005 which was also not true.
- 7) That the plaintiff alleged that she has been working in Amrattary Primary School till today as Asstt. Teacher as well as she was getting her salary w.e.f. 01.04.2004 till July 2006 which is not admitted by the appellant/defendant no.5.
- 8) That she also stated that she filed a writ petition (C) no.3372/2000 before the Hon'ble Gauhati High Court and Hon'ble Gauhati High Court disposed the said W.P.(C) on 23.06.2000 in the light of order in connection with W.P. (C) No.1058/96 dated 23.05.1996.
- 9) That as the appellant stopped the salary of the plaintiff the plaintiff filed another W.P.(C) No.1647/07, in the meantime another defendant no.2 the Director of Elementary Education (Assam) passed an order on 17.05.08 directing the appellant to dismiss the plaintiff from service alleging the appointment to be illegal.
- 10) That in her last W.P. (C) No.2763/08 the Hon'ble Gauhati High Court vide order dated 23.09.08 disposed the W.P. (C) granting leave to the plaintiff to raise claim of declaration in appropriate court of law.
- 11) That the plaintiff as such filed the present Title Suit against the dismissal order dated 17.05.08 passed by the present appellant.
- 12) That the appellant submitted written statement before the Trial Court stating that the appointment of the plaintiff is a fake one as such no record is available in respect of her appointment in the office of the appellant. It is also

clarified that there is no school in the name of Bhelengimari LP School under Barkhetri Block.

- 13) That the plaintiff has examined Sri Gulok Ch. Deka as PW-2 deposed that the plaintiff was not given appointment during his term as discussed in Issue no.1 by the Learned Munsiff No.1.
- 14) That in Issue No.3 the Learned Court below also discussed that there is no school as Bhelengimari LP School under Barkhetri Block. It is also discussed by the court below that the date of the appointment letter, the signature of D.I., Nalbari Ramesh Deka is seen on 16.06.1995 but Ramesh Deka was transferred from Nalbari D.I. Office and handed over the charge to Jadav Baruah on 12.06.1995 as such the alleged appointment letter is a fake one.
- 15) That the Learned Munsiff No.1 observed that the plaintiff side has exhibited many photocopies of documents and other side has not objected. It is also found that the defendant side has not adduced any evidence.
- 16) That the Learned Court also observed that the plaintiff could not exhibit the original appointment letter.
- 17) That the observation made by the Learned Court is that the original appointment letter of the plaintiff is not in her possession as it is seized by police in a case C.I.D. Case No.06/2008 under section 420/468/471 IPC as such the Learned Court has held that there is no fault of the plaintiff for her inability to produce the original appointment in the court. The said observation of the Learned Court is absolutely wrong and not sustainable under provision of law.
- 18) That the Learned Court below observed that Exhibit-2 i.e. the photocopy of her appointment letter is a secondary evidence as well as a public document under Section 74(i) of The Evidence Act and as such

is admissible in evidence which is completely wrong conception of the Learned Court below.

- 19) That the Learned Court in her Judgment Para No.23 has held that Exhibit-3 is a photocopy of transfer order dated 28.02.2003 of the plaintiff from Bhelengimari LP School to Madhalbari LP School is a public document and is admissible which also hit by the provision of evidence Act, Section 62/63/64/65/74.
- 20) That the Learned Trial Court in Para No.28 of her Judgment observed that Exhibit-9 is the photocopy of submission of proposal for regular scale of pay of the plaintiff given by the D.I. Of Schools, Nalbari to the Director of Elementary Education, Assam and the said is admissible also contrary to the provision of law.
- 21) That in Para No.29 the Learned Court observed that a certificate issued by Gaonburah Sumenta Medhi as Exhibit-10 and on that basis the Learned Court has held that there is a school as Bhelengimari LP School.
- 22) That in Para No.32 the plaintiff exhibited photocopy of Teacher Attendance register of Amrattary LP School as Exhibit-14 which is also not admissible under evidence Act.
- 23) That the Learned Court in Para No.34 of her Judgment has observed that the defendant side has not adduced any evidence either oral or documentary to discharge their burden admittedly the responsibility was not discharged by the engaged advocate of the appellant to bring out the truth none the less the plaintiff could not escape from the burden of proof under Section 106 of Evidence Act.
- 24) That the Learned Court consider the original appointment letter has been seized in connection with CID PS Case No.06/2008. The Learned Court should have considered that the plaintiff has failed to discharge

their burden for calling for the record of the police case nor the court called for the said case record in its own motion for ends of justice.

- 25) That the trial court passed the decree by declaring that the plaintiff is duly appointed teacher and rendering her services as teacher is entitled to receive her salary is based on no evidence. As such liable to be set aside.
- 26) That the defendant submitted WS stating that the suit is not maintainable in its present form as the mandatory notice under Section 80 CPC required to be served upon to the defendant before filing the suit is not complied. That no suit against the Govt. or any public officer shall be instituted without 2 months prior notice.
- 27) That the appellant/defendant in WS, clearly stated that the appointment letter of the plaintiff is a fake and there is no record with respect of her appointment in the office of this appellant.
- 28) That the defendant in her WS stated that the two writ petition submitted by the plaintiff before the Hon'ble Gauhati High Court has been dismissed.
- 29) That the plaintiff matter earlier came up in WP(C) No.1647 of 2007 before the Hon'ble Gauhati High Court and the Director of Elementary Education submitted affidavit stating that the appointment of the plaintiff is a fake appointment and further stated that the inquiries have revealed that there is no school by the name of Bhelingimari LP School and there is no official record available in respect of her transfer. As such the director had directed this appellant not to allow the petitioner to continue in service and also to file an FIR.
- 30) That the Learned Court has not considered that when the appointment order was found to be illegal or fake there cannot be any obligation on the part of state to pay salary even the services rendered.

- 31) That in any fake appointment if some official is also party then the plaintiff can claim money against such person as individual capacity.
 - 32) That the impugned Judgment and decree is made on improper documents that is photocopy, without going through the original appointment letter or without proving such documents by relevant official document and proper official person, without observing the mandatory provision of Section 80 CPC such decree is liable to be set aside forthwith.
 - 33) That there are sufficient documents and evidence of the appellant which the appellant is ready to produce before the Ld. Court if the Ld. Court allows the appellant to do so under Rule 27 of order 41 of CPC of Your Honour may be pleased to remand back the suit to the trial court for disposal afresh.
 - 34) That a separate petition for staying of execution of decree as well as the execution proceeding no.15/2004 is made.
 - 35) That the matter is involved with the huge amount of exchequer of public money as well as fraud committed by the plaintiff for illegal gain.
 - 36) That the admission of the appeal is in a delayed stage sought for ends of justice and prevent of abuse of process of law. Defendant/Appellant case is not at all placed before the Ld. Lower Court. Had the defence counsel placed the relevant documents before the court and cross-examined the plaintiff witnesses and took steps for producing the defence witness, the result would have been a different one.
 - 37) That a petition for condonation of delay U/O 3A/151 CPC and Section 5 of Limitation Act as well as a petition for staying the execution are submitted separately.
3. On the above grounds the appellant has prayed for setting aside the

impugned Judgment and Decree. After admitting the appeal the record of T.S. No.05/09 was called for and the same was received.

4. On appraisalment of the original case record, it appears that the plaintiff has filed the suit for declaration, and other consequential relief.

5. The plaintiffs case interalia is that the plaintiff passed HSLC and subsequently Junior Basic final examination. The plaintiff was selected duly in the State Level selection process and found eligible for the post of Assistant Teacher and was duly appointed against a sanctioned post and posted at Bhelengimari LP School by the defendant no.5 and accordingly the plaintiff joined her post. In 2003, the plaintiff was transferred from Bhelengimari LP School to Pub-Madalbari LP School under Tamulpur Block. The plaintiff was again transferred to Amrattary Primary School from Pub-Madalbari LP School on 05.10.05. The plaintiff has been working in the Amrattary Primary School till today as Assistant Teacher. The above mentioned transfers were made against regular vacancy. The plaintiff was allowed to draw a regular pay scale with other allowances w.e.f. 01.04.04. Prior to her transfer in 2003, the plaintiff had to file a Writ Petition (C) No.3372/2000 before the Hon'ble Gauhati High Court and the Hon'ble GHC disposed of the said WP on 23.06.2000 in the light of the order of another WP(C) NO.1058/96 dated 23.05.96. Thereafter, the plaintiff was drawing regular scale of pay w.e.f. 01.04.04 till July/06. But thereafter, the respondents again stopped paying salary to the plaintiff. Hence, the plaintiff had to file another WP (C) No.1647/07. While the said WP(C) No.1647/07 was pending, the defendant no.2 passed an order on 17.05.08 directing the defendant no.5 to disallow the plaintiff to continue in the service alleging the appointment of the plaintiff to be illegal. While passing such order, the plaintiff was not given any opportunity to place her authenticated documents pertaining to her appointment. In the last WP(C) No.2763/08, the Hon'ble Gauhati High Court vide order dated 23.09.08 disposed of the said WP in the light of earlier writ petition file by the plaintiff and others granting leave to the plaintiff to raise the claim of declaration in appropriate Court of Law. Hence, this suit is filed by the plaintiff praying for declaration that the order

dated 17.05.08 passed by defendant no.2 is illegal and in-operative and that the plaintiff is a duly appointed teacher and is entitled to receive her due salaries and other reliefs.

6. On receiving notice the defendant no.4 & 5 appeared before the court and contested the suit by filing written statement. In their written statement the defendant denied the entire averments made by the plaintiff in her pleadings. The defendant stated that the appointment of the plaintiff is a fake one and as such no record is available in respect of her appointment in the office of the defendant no.5. The defendant further stated that there is no school in the name of Bhelengimari LP School under Barkhetri Block which was shown in the alleged appointment letter of the plaintiff. Hence, the defendant prayed to dismiss the suit of the plaintiff.

7. Upon pleadings of the parties learned trial court has framed the following issues:

I S S U E S

- i) Whether there is any cause of action for the suit?
- ii) Whether the suit is maintainable?
- iii) Whether the plaintiff was appointed as an Asstt. Teacher in the Bhelengimari LP School by an order dated 16.06.1995 passed by the defendant no.5?
- iv) Whether the plaintiff is entitled to the reliefs as prayed for?
- v) To what other relief/reliefs the parties are entitled?

8. The plaintiff side had adduced the evidence of 3 (Three) witnesses and exhibited 16 (Sixteen) documents in the main suit. During the pendency of

appeal the plaintiff side had re-examined Dilip Kr. Baishya and Golok Ch. Deka as PW 1 and PW 3 respectively. The plaintiff side has also adduced fresh evidence of PW 2. The defendant side had neither adduced any evidence of witness nor had exhibited any document in the main suit. However, during the pendency of the appeal the defendant appellant had adduced the evidence of 2(two) witnesses and has exhibited 9 (nine) documents.

I have heard the Ld. Counsels for both the parties and gone through the materials on records as well as the memorandum of appeal.

FINDINGS AND REASONS THEREOF

9. **Issue No (i) is relating to the cause of action for the suit.**

The learned trial court has decided this issue in the affirmative and in favour of the plaintiff. The cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support of his right to a judgment of the court. In the instant suit the plaintiff has claimed that she was duly appointed as an Asstt. Teacher by the defendant No (v) after her selection in the State Level Selection Process and was posted at Bhelengimari LP School No. 1374. Since then the plaintiff has been continuing her service as an Asstt. Teacher. The defendant, on the other hand took the plea that the appointment of the plaintiff is illegal and there is no such school as Bhelengimari LP School under Barkhetri Block as seen in the appointment letter. As there is assertion of right by the plaintiff and denial of right by the defendant there is cause of action in the suit.

10. **Regarding issue No (ii) which relates to maintainability of the suit,** there is no specific pleading that the suit is not maintainable in its present form or in the manner in which it should have been filed. The plaintiff has filed this suit for declaration that the order dated 17/05/08 passed by the Director of Elementary Education, Kahilipara, Guwahati is illegal and in operative and for declaration that the plaintiff is a duly appointed teacher and rendering her service as teacher in pursuance of the various order of the defendant and is entitled to receive her salaries. I find nothing to hold that the

suit is not maintainable in its present form.

11. Coming up next for discussion is issue No (iii) which is the most vital issue in this suit. Issue No (iii) is contingent upon the question as to **“Whether the plaintiff was appointed as an Asstt Teacher in the Bhelengimari LP School by an order dated 16/06/1995 passed by the defendant No. 5 ?”**

In her pleadings the plaintiff has taken the plea that she was duly appointed as an Asstt. Teacher by the defendant No. 5 after her selection in the State Level Selection process and was posted at the Bhelengimari LP School No. 1374 vide Memo No. EPD/CB/I/95/9/4838/42 dated 16/06/95. Accordingly the plaintiff respondent joined there as per the appointment order.

12. The defendant in their written statement denied the averments of the plaintiff and stated that the appointment of the plaintiff is a fake one and that there is no school as Bhelengimari LP School under Barkhetri Block as seen in the appointment letter.

13. While submitting his argument, the learned counsel for the plaintiff/ respondent has drawn my attention to the evidence of PW 2, Golok Ch. Deka who was a retired DI of Nalbari. PW 2 has stated in his evidence that during his tenure, Sabya Nath was transferred from Bhelengimari LP School to Pub Madalbari LP School. PW 2 has exhibited his signature as Exhibit-3(1) on the transfer order marked as Exhibit-3. PW 2 also stated that later Sabya Nath was sent to Howly Normal School for training as per direction of the Block Officer. Thereafter her name was proposed for regular pay scale. PW 2 has exhibited his signature as Exhibit 9(1) on the said proposal marked as Exhibit 9. PW 2 further stated that later the plaintiff was transferred from Pub Madalbari LP School to Amrattary LP School on 05/10/2005. PW 2 has exhibited his signature as Exhibit 13(1) on the said transfer order marked as Exhibit-13.

14. Learned counsel for the plaintiff respondent has also drawn my attention to the evidence of PW 1, Abul Hussain, the in-charge Principal, Howly

Normal School, Barpeta. PW 1 stated that the plaintiff took training under him. He also exhibited his signature as Exhibit 7(1) and 8(1) on the certificate issued by him to Sabya Nath whereby she was declared to have passed the Junior Basic Training Examination and the release order issued by him which are marked as Exhibit 7 and Exhibit 8 respectively. Apart from that the photo copy of the Roll sheet, Admission Register, and result sheet proved in original were also exhibited.

15. The learned counsel for the plaintiff respondent while arguing the case has further submitted that the learned Munsiff considered all the documents which were exhibited by the plaintiff and found them to be genuine. The learned counsel further submitted that the appellant were not able to prove any of the documents to be false or fabricated.

16. On perusal of the judgment and order dated 4/12/2013 passed by the learned trial court in TS No. 5/09 it appears that the documents which were marked as Ext-2,3,9,13,14 and 15 were held by the learned trial court as admissible in evidence though those were photo copies and basing on those exhibits the suit was decreed. The learned trial court while discussing about the admissibility of the documents, had relied upon the provision of section 62, 63,64,65 and 74 of the Indian Evidence Act. The learned trial court has held that as Exhibit- 2,3,9,13,14 and 15 are the photo copies of public documents, they are admissible as secondary evidence.

17. Here I would like to point out that the photostat copies of a document is a piece of secondary evidence and it can be admitted, in case the original is proved to have been lost or not immediately available, for given reason, it is not conclusive prove in itself of the truthfulness of the contents contained therein. Photostate copies of documents should be accepted in evidence after examining the original records as genuineness of a documents is a fundamental question. In a case where the Photostat copy of the original was produced, and there was no proof of its accuracy or of its having been compared with, or its being true reproduction of the original it was held that the Photostat copy can not be considered as secondary evidence as necessary foundation for its reception was not laid. Similarly, in our case the Photostat copies exhibited by the plaintiff are not admissible in evidence as there is no

prove of its accuracy and genuineness.

18. The learned counsel for the plaintiff respondent further submitted that the plaintiff was appointed after regular selection and on receipt of the appointment letter she joined in Bhelengimari LP School and started working there by taking regular classes and signing in the daily register of the school. The learned counsel further stated that the documents exhibited and the evidence adduced by the plaintiff side are clear that the plaintiff rendered service in different schools for more than 13 years for which she can not be driven out from her service under the law and deprived of her livelihood.

19. The learned counsel for the plaintiff / respondent has cited a law laid down by the Hon'ble Supreme Court reported in a recent decision in **(2015) 15 SCC 151, Ratnesh Kr. Choudhury Vs Indira Gandhi Institute of Medical Science, Patna, Bihar and others** which clearly lays down that the punitive action can not be taken without holding a regular inquiry and without giving an opportunity to the delinquent officer. It was held by Hon'ble Supreme Court that if exparte inquiry or report is the motive for the termination order, then termination is not to be called punitive merely because principle of natural justice have not been followed. On the other hand, " if the facts revealed in inquiry are not the motive but foundation for termination of services it would be punitive and the principles of natural justice are bound to be followed and failure of natural justice are bound to be followed and failure to do so could make the order legally unsound." According to the Learned counsel for the plaintiff respondent, the plaintiff respondent cannot be terminated from her service without giving her an opportunity of being heard.

20. At this point my attention is drawn to the order of the Hon'ble Gauhati High Court dated 23/09/2008 passed in WP(C) No. 2763 of 2008 and WP(C) No. 1647 of 2007 marked as Exhibit-12. On perusal of the aforesaid order it transpires that as the plaintiff was not paid salary till July,2006 she instituted a writ proceeding which was registered and numbered as WP(C) 1647/2007 and during the pendency of the said writ an order was passed on 17/05/2008 by the DI of Schools, Nalbari to disallow the plaintiff/ respondent to continue in service as her appointment order was illegal. Challenging the

said order WP(C) No. 2763/2008 was filed by the plaintiff. A counter affidavit was also filed by the Director of Elementary Education and the same was registered as WP(C) 1647 of 2007. The Hon'ble Gauhati High Court disposed of both the aforementioned writ petitions together by observing that in a situation where the issues involved requires determination of disputed question of fact, such an exercise will not be appropriate for adjudication in a writ proceeding. While disposing of the writ petition the Hon'ble High Court has further held that unless the Court is satisfied that the appointment of incumbent is genuine and legally valid, no direction for payment of salary by the State should be made. As such the plaintiff respondent was granted leave by the Hon'ble High Court to approach the competent court to establish the genuineness of her appointment.

21. In view of the Hon'ble Gauhati High Court's order it transpires that the main issue which is to be decided here is regarding the genuineness of the plaintiff's appointment which is a question of fact. The plea raised by the Ld. counsel for the plaintiff regarding the principle of natural justice not being followed by the defendants is purely a question of law which is beyond the ambit of this court. The question which has to be decided by this court as per the order of the Hon'ble Gauhati High Court is whether the appointment of the plaintiff respondent was legal or illegal.

22. During the course of argument the Ld. Counsel for the appellant defendant submitted that the plaintiff could not produce any documents including the select list in connection with the process of her selection as an Asstt Teacher and this raises a doubt in our mind regarding the genuineness of her appointment. In reply, the learned counsel for the plaintiff/ respondent has further submitted that for the sake of argument even if the plaintiff / respondent could not produce the select list before the court it may be taken as an appointment of irregular nature.

23. Here I would like to mention that the distinction between two terms "**irregular appointment**" and "**illegal appointment**" is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is the State within the meaning of Article 12 of the Constitution of India, the

recruitment would be an illegal one. Whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

24. Now if we go through the evidence on affidavit of DW 1 and DW 2 we find both of them stating that the name of the plaintiff is not found in Exhibit A among the name of the teachers who were selected for appointment in the post of teachers. According to PW 1 during the year 1995 the name of Sabya Nath was not found in the selection list marked as Exhibit-A. It appears that both the DWs has exhibited the relevant documents in connection with the selection and appointment in the post of teachers by the committee of the Advisory Board. The resolution of Nalbari District Elementary Education Advisory Board regarding appointment of some other candidates in the vacant post as teachers are also exhibited by the DWs. According to the DWs the Director of Elementary Education, Assam, Kahilipara had made an inquiry regarding the fake appointment of the respondent and vide order dated 17/05/08 directed the DI of Schools, Nalbari to disallow the plaintiff to continue in her service as per appointment order was obtained illegally and not by following any establishment rules and procedures.

25. A brief perusal of Exhibit A and Exhibit A (1) reveals that the name of the plaintiff is not among the 20 selected candidates as per the meeting of the Advisory Board". It is also seen that in the subsequent proceeding held on 21/06/95, 6/01/95, 1/10/95 , 17/11/95 for appointment of some teachers in vacant posts which are marked as Exhibit B,C,D and E respectively, there is no mention of Sabya Nath's appointment. Even Golok Ch. Deka who was examined as PW 3 during the pendency of the appeal stated in his cross-examination that in the selection list as seen from the record of Exhibit A(1), 20 (Twenty) persons were selected for appointment and there is no mention about the name of Sabya Nath in that list. PW 3 further stated that for regular appointment of an LP School teacher one has to face interview and the Advisory Board will have to select the candidates. But PW 3 could not say whether Sabya Nath appeared before the Advisory Board to face interview for her appointment as because he was not present at that time. In their cross-

examination we find both DW 1 and DW 2 stating that though in the appointment letter of plaintiff the signature of Ramesh Deka is seen as DI of Schools, Nalbari on 16/06/1995, actually Ramesh Deka handed over the charge of DI of Schools, Nalbari to Shri Jadav Baruah on 12/06/95. Coming back to the cross-examination of Golok Deka who was examined as PW 3, we find him stating that as per Exhibit-H(2) which is the Cash book, Jadav Baruah took charge of DI of Schools, Nalbari from Ramesh Deka on 12/06/95. On perusal of Exhibit -H(2) it is very much clear that on 12/06/95 Jadav Baruah took charge as DI of Schools Nalbari from Ramesh Deka with a closing balance of Rs. 16,85,084/-. When the documents itself reveals that Ramesh Deka handed over the charge to Jadav Baruah on 12/06/95, he had no power to issue an appointment letter to the plaintiff on 16/06/95. Hence, it is very clear that the appointment of Sabya Nath is not an irregular appointment but an illegal appointment.

26. Apart from that from the cross-examination of Dilip Kr. Baishya also who was examined as PW 1 during the pendency of the appeal, some anomalies are revealed. PW 1 stated that he had brought the Teachers Attendance register along with him while coming to depose and the same is marked as Exhibit 17. But on perusal of Exhibit 17 it is seen that in the said register the signatures of the other teachers are not found. We also find PW 1 stating that he has submitted another register for teachers and staff in the court but according to him the plaintiff's name is not in the said register. From the cross-examination of PW 1, it is very clear that a separate register is maintained for the plaintiff. As such there is no doubt that some illegalities were done in the entire process regarding the appointment of the plaintiff and her continuance in service as an Asstt. teacher.

27. The defendant has also taken the plea in their written statements that there is no school as Bhelengimari School. Record reveals that the plaintiff had adduced the evidence of the PWs to prove that she was transferred to different schools and that at present she is serving at Amrattary LP School. The plaintiff has also tried to prove that during her service she had undergone training at Howly Normal School. Though the plaintiff has tried to bring out the evidence that she has been rendering service since long, the

main question for determination here is whether the plaintiff was appointed as Asstt Teacher in the Bhelengimari LP School by an order dated 16/06/95 passed by the then DI of Schools, Nalbari. In order to prove the plea the plaintiff respondent has adduced the evidence of PW 2 Golok Ch. Deka who has admitted his signature as Exhibit 3(1) on the transfer order of the plaintiff from the Bhelengimari LP School to Pub Madalbari LP School which is marked as Exhibit-3. But as discussed earlier Exhibit-3 can not be admitted in evidence as the genuineness of the same is not proved. Even if for the sake of discussion we accept the transfer order and the training order of the plaintiff respondent as admissible in evidence, when the initial order of appointment was not effective, the subsequent orders of transfer and training becomes automatically infructuous.

28. On perusing the evidence of PW 2, it appears that PW 2 has stated in his cross-examination that a petition for transfer does not come to him directly but comes through Barkhetri Block Elementary Office and as per the proposal of said BEEO the plaintiff was transferred to Pub Madalbari School. From the statement of PW 2 it can be assumed that only as per proposal of BEEO he had transferred the plaintiff from Bhelengimari LP School to Pub Madalbari School. It appears that PW 2 does not have any personal knowledge about the existence of Bhelengimari LP School. Apart from that on perusal of the evidence of the PWs also it appears that none of the PWs has deposed anything about the establishment or existence of Bhelengimari LP School. The plaintiff could have adduced the evidence of Headmaster of Bhelengimari LP School or could have exhibited the registers of the said school to prove its existence.

29. The learned counsel for the plaintiff respondent submitted in the course of argument that the daily register of Bhelengimari LP School was signed by the plaintiff but the said register was not exhibited by the plaintiff. Even DW 2, the retired DI of the schools, Nalbari stated in her cross-examination that there are no records of Bhelengimari LP School in their office. Exhibit H which is the report of the BEEO, Barkhetri Block reveals that there is no such school as Bhelengimari LP School under Barkhetri Block as written in the appointment letter and that the name of Sabya Nath has not been found in

the Data Base 2002. The plaintiff respondent had exhibited a certificate of gaonburha as Exhibit 10. The said certificate reveals that due to soil erosion Bhelengimari LP School is established in No 1 Kapla Gaon. This document itself reveals that there is no such school as Bhelengimari LP School under Barkhetri Block.

30. From the above discussion and materials available on record, it appears that the appointment letter in the name of the plaintiff on 16/06/95 was not issued by defendant No 5 i.e. the then DI of Schools, Nalbari, as the signature seen in the said appointment letter is of Ramesh Deka and Ramesh Deka was not the DI of Schools, Nalbari at that relevant point of time. Apart from that it is already discussed earlier that there is no such school as Bhelengimari LP School under Barkhetri Block. As such the entire appointment process of the plaintiff is illegal. Hence in view of the above discussion it appears that the findings of the learned trial court below warrants interference and is liable to be set aside.

Situated thus this issue is decided in the negative and in favour of the appellant/ defendant.

31. **Issue No (iv) and (v) are relating to the reliefs claimed by the parties.** It is already discussed in the previous issue that the plaintiff was not appointed as an Asstt. Teacher in Bhelengimari LP School vide order dated 16/06/95 passed by the defendant No. 5 i.e. the then DI, Nalbari as the person who issued the appointment letter was Ramesh Deka and he was not the DI of school, Nalbari on 16/6/1995. It is also revealed from the discussions that there is no school as Bhelengimari LP School under Barkhetri Block. Hence in view of the above discussion the plaintiff is not entitled to any relief as prayed for.

32. The learned trial court without going to the root of dispute between the parties and without making any effort to discern the truth superficially dealt with the matter which resulted in a decree in favour of the plaintiff. As such the judgment and decree in TS Case No 05/09 dated 04/12/13 is perverse and the same is liable to be set aside.

ORDER

33. In the result, the present first Civil Appeal is allowed on contest with cost.

The impugned Judgment and Decree dated 04/12/13 passed by the Learned Munsiff No.1, Nalbari in TS No 05/09 is hereby set aside.

Draw up a decree accordingly.

Send down the original case record being T.S. No 05/09 to the court of the first instance with a copy of the Judgment forthwith.

Given under my hand and seal of this court on this the 13th day of February/2019.

Civil Judge
Nalbari

Dictated & Corrected by me

Civil Judge
Nalbari