

GAHC010002642022



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

Case No. : WP(C)/116/2022

SULTANA REJIA AHMED
D/O ABDUR RAZZAQUE, VILL-RUBHI, P.O.-BALIKURI, P.S.-KALGACHIA,
DIST-BARPETA, ASSAM, PIN-781319

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND AND SECRETARY TO THE
GOVT. OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, GUWAHATI-
781006

2:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
GUWAHATI-781006

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
BARPETA
DIST-BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MD. M H CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

08-02-2023

Heard Mr. S. N. Ahmed, learned counsel for the petitioner and Mr. A. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1 to 4.

The petitioner is serving as a Graduate Teacher in Rubhi Balikuri Girls M.E. Madrassa in the Mandia Education Block of Barpeta District since 02.11.2008 on being appointed by its School Managing Committee, during its venture stage.

It is stated by the petitioner that though her name was placed before the District Scrutiny Committee for Elementary, District-Barpeta for provincialisation of her service under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017, but in the Notification No. EPD-46/2017/Pt-I/42 dated 04.02.2021 issued by the Director of Elementary Education, Assam, her name did not figure for provincialisation as 'tutor' under the said 2017 Act. However, the names of four other teachers serving in said school figured in the list of provincialisation.

As such, the petitioner along with 14 others approached this Court in WP(C) No. 2734/2021 praying for a direction to the respondent authorities to provincialise their services. However, the Court by order dated 26.10.2021 passed in said WP(C) No. 2734/2021 observing that "*the right to be provincialised or regularized is an individual right based upon the facts of the individuals in conjunction with the law of provincialisation/regularization as the case may be. There cannot be a blanket order either provincialising/regularizing or not to provincialsise/regularize.*"

By said order dated 26.10.2021, the Court deleted the names of the petitioner Nos. 2 to 15 of said WP(C) No. 2734/2021 including that of the petitioner and granted them liberty to approach the Court with appropriate application.

Accordingly, the petitioner filed this writ petition on 04.01.2022 praying for a direction to the respondent authorities in Elementary Education Department to consider her case for provincialisation of service as a tutor under the provisions of said 2017 Act.

Section 3 (1)(xi) of said 2017 Act stipulates as follows:-

“In case of Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009).

Section 14 of said 2017 Act relates to “Appellate Authority” which reads as follows:-

“Appellate Authority:-

The State Level Scrutiny Committee shall be the appellate authority against any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority against any recommendation of the State Level Scrutiny Committee.”

The Hon’ble Supreme Court in the case of *the Commissioner of Income Tax and Another Vs. Chhabil Dass Agarwal* reported in (2014) 1 SCC 603 held that “when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision.”

After hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the petitioner to prefer a statutory appeal before the Secretary to the Government of Assam in the Department of School (Elementary) Education as provided under Section 14 of said 2017 Act as amended forthwith along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary to the Government of Assam in the Department of School (Elementary) Education on verification of the relevant records, shall dispose of the said statutory appeal of the petitioner with a reasoned order within a period of 90 (ninety) days from the date of receipt of the said appeal after giving an opportunity of hearing to the petitioner intimating the outcome of her said appeal.

While disposing of her said appeal if the petitioner is found to be eligible for provincialisation

following the provisions of said 2017 Act, the respondent authorities in Elementary Education Department shall provincialise her service from the date of provincialisation of the other teachers of said Rubhi Balikuri Girls M.E. Madrassa District-Barpeta giving her all such benefits including service benefit as applicable under the law.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant