GAHC010003972022

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

Case No. : WP(C)/248/2022

HAMIDA BEGUM
W/O SAFIQUL ISLAM, VILL- 3 NO. BORGHULI, P.O.-B-CHAPMARI, P.S.-ULUONI, DIST- NAGAON, ASSAM, PIN-782120

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR
ELEMENTARY EDUCATION
CUM CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
ASSAM, KAHILIPARA, GUWAHATI-19

3:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
REPRESENTED BY THE DEPUTY COMMISSIONER
NAGAON, ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

– **B E F O R E** –

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

06.12.2023

Heard Mr. F.U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department and Ms. R.B. Bora, learned Standing Counsel, BTC.

2. By this writ petition, the petitioner has raised the grievance pertaining to non-provincialization of his services as the Assistant Teacher in Borghuli Adarsha L.P. School in the district of Nagaon.

3. The brief facts requisite to be noticed for the purpose of adjudicating the issues arising in the present petition are noted hereinbelow.

4. The petitioner was appointed as an Assistant Teacher on 25.05.2008 in Borghuli Adarsha L.P. School and claims that she continued to remain in the said school till date. The cases of the teachers working in the said school were taken up for provincialisation under the provisions of the Assam Educational Institutions (Provincialisation of Services) Act, 2011 (in short, Act of 2011) and the District Scrutiny Committee (DSC) having found the petitioner to be eligible, had recommended the claim of the petitioner for provincialisation of his service. However, the provincialisation of the service of the petitioner could not be materialized as the same was not favourably considered by the State Level Scrutiny Committee. However, the said Act of 2011 came to be set aside by this Court in the case of ***Chandan Kr. Neog and Others Vs. the State of Assam, reported in 2016(5) GLT 296*****.**

5. Pursuant to the interference of the said Act of 2011 by this Court, the Government of Assam in the Education Department had enacted the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (in short, the Act of 2017).

6. The Commissioner and Secretary to the Government of Assam, Elementary Education Department had, vide communication dated 29.05.2017, required the teachers, whose educational institutions had already been provicialised as per the Act of 2011 but their services were not so provincialised, to submit application for provincialisation of their services under the new Act of 2017.

In terms of the said communication dated 29.05.2017, the petitioner on 05.06.2017 submitted his application before the Headmaster, Borghuli Adarsha L.P. School. The Headmaster in turn forwarded the said application of the petitioner along with all relevant particulars required, recommended to the District Scrutiny Committee for further proceeding.

The said application, not being considered by the District Scrutiny Committee, the petitioner has instituted the present proceeding.

7. Mr. F.U. Barbhuiya, learned counsel for the petitioner contends that although there was a post sanctioned for the petitioner when the process of provincialisation under the Act of 2011 was undertaken, the said process could not be taken to its logical conclusion due to interference made by this Court of the said Act of 2011. It is submitted by Mr. Barbhuiya that the application as submitted by the petitioner for consideration of his case for provincialisation under the Act of 2017 is yet to be given its due consideration.

8. Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department representing the respondents submits that the writ petition can be

disposed of requiring the District Scrutiny Committee headed by the jurisdictional Deputy Commissioner to consider the application submitted by the petitioner.

9. I have duly considered the submissions advanced by the learned counsel for the parties and also considered the materials available on record.

10. The proceedings involving the petitioner undertaken in terms of the Act of 2011 need not be dealt with in the present case as the same have become redundant in view of the interference made by this Court with the Act of 2011 in the case of ***Chandan Kr. Neog*** (supra).

11. Since the communication dated 29.05.2017 was issued by the Commissioner and Secretary to the Government of Assam, Department of Education in pursuance to coming in to force of the Act of 2017, requiring the teachers like the present petitioner to submit application for consideration of their cases under the Act of 2017, such submission of application cannot be an empty formality and must be given its due consideration.

12. The material available on record indicates that the application submitted by the petitioner in pursuance to the communication dated 29.05.2017 for having his case considered for provincialisation under the provisions of the Act of 2017, is still pending, inasmuch as no material has been brought on record to demonstrate that such application was considered by the District Scrutiny Committee.

13. In view of above, without commenting on the merits of the matter or the rights of the petitioner, the writ petition is disposed of by directing the jurisdictional District Scrutiny Committee to take on record the application of the petitioner and consider the same strictly in accordance with the provisions of the

Act of 2017 and to make its recommendations thereon within a period of 2 (two) months from the date of receipt of a certified copy of this order.

In the event, the case of the petitioner is favourably recommended by the District Scrutiny Committee, the matter shall thereafter be processed by the authorities empowered to consider such recommendation and conclude the process involved expeditiously and not later than the period of 3 (three) months from the date the recommendation of the District Scrutiny Committee is received. Thereafter, necessary orders as may be called for be passed by the Director of Elementary Education, Assam.

14. With the above directions, the writ petition stands disposed of.

15. The parties are left to bear their own costs.

JUDGE

Comparing Assistant