

GAHC010206752016



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

Case No. : WP(C)/5209/2016

ISMAIL ALI SK.
S/O SEKENDAR ALI SK. R/O VILL- PAGLAGANJ P.O. PAGLAHAT P.S.
GOLOKGANJ DIST. DHUBRI, ASSAM, PIN - 783331.

VERSUS

THE STATE OF ASSAM and 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, ELEMENTARY DISPUR, GUWAHATI-6.

2:THE DISTRICT ELEMENTARY EDUCATIO OFFICER-CUM-
MEMBER SECRETARY
DIST. LEVEL SCRUTINY COMMITTEE
DHUBRI
DIST. DHUBRI
ASSMA
PIN - 783301.

3:THE DEPUTY COMMISSIONER

DHUBRI
DIST. DHUBRI
ASSAM
PIN - 783301.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER-CUM-MEMBER
SECRETARY
DISTRICT LEVEL REDRESSAL COMMITTEE
DHUBRI
DIST. DHUBRI
A SSMA PIN - 783301.

5:THE DEPUTY INSPECTOR OF SCHOOLS

DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

6:THE SCHOOL MANAGING COMMITTEE

OF BALASI L.P. SCHOOL
REP. BY ITS PRESIDENT
VILL- PAGLAGANJ P.O. PAGLAHAT
DIST. DHUBRI
ASSAM
PIN - 783334.

7:THE HEADMASTER-CUM- MEMBER SECRETARY

MOHAMMED ALI
VILL- PAGLAGANJ P.O. PAGLAHAT
DIST. DHUBRI
ASSAM
PIN - 783334.

8:SMTI. SALEHA KHATUN

W/O SAKIRUDDIN HOQUE VILL- PAGLAGANJ P.O. PAGLAHAT DIST.
DHUBRI
ASSAM
PIN - 783334.

9:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MR.R ISLAM

Advocate for the Respondent : MR.M DUTTAR-9

Linked Case : WP(C)/1177/2015

MD. ISMAIL ALI SK.
S/O- SEKENDAR ALI SK.
R/O VILL. and P.O. - PAGLAGANJ

P.S.- GOLAKGANJ
DIST.- DHUBRI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
EDUCATION DEPTT. ELEMENTARY
DISPUR
GHY- 6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

3:THE DIST. ELEMENTARY EDUCATION OFFICER-CUM-MEMBER SECY.
DIST. LEVEL SCRUTINY COMMITTEE
DHUBRI
DIST.- DHUBRI
ASSAM.

4:THE DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM.

5:THE DY. INSPECTOR OF SCHOOLS
DHUBRI
DIST.- DHUBRI
ASSAM.

6:THE SCHOOL MANAGING COMMITTEE
BALASI L.P. SCHOOL
REP. BY ITS PRESIDENT
VILL.- PAGLAGANJ
P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334.

7:THE HEADMASTER-CUM-MEMBER SECY.
MOHAMMED ALI
VILL.- PAGLAGANJ
P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334.

8:SALEHA KHATUN
W/O- SAKIRUDDIN HOQUE
VILL.- PAGLAGANJ

P.O.- PAGLAHAT
DIST.- DHUBRI
ASSAM
PIN- 783334.

Advocate for : MR.M U MONDAL

Advocate for : MR.M DUTTAR-8 appearing for THE STATE OF ASSAM AND 7
ORS

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 11.05.2023

Heard Mr. D.P. Chaliha, learned senior counsel, assisted by Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. P.K. Borah, learned standing counsel for the Elementary Education Department and Mr. M. Dutta, learned counsel for the private respondent.

Status of parties in these two writ petitions:

2. The petitioner is same in both the writ petitions.

3. In W.P.(C) 5209/2016, the respondent nos. 1, 2, 3, 5 and 6 are authorities under the Elementary Education Department. The respondent no. 4 is the Deputy Commissioner, Dhubri. The respondent nos. 7 and 8 are the School Managing Committee and the Headmaster-cum-Member Secretary of the concerned Balashi L.P. School. The respondent no. 9 is the private respondent in this case.

4. In W.P.(C) 1177/2015, the respondent nos. 1, 2, 3 and 5 are authorities under the Elementary Education Department. The respondent no. 4

is the Deputy Commissioner, Dhubri. The respondent nos. 6 and 7 are the School Managing Committee and the Headmaster-cum-Member Secretary of the concerned Balashi L.P. School. The respondent no. 8 is the private respondent in this case.

Pleadings in these two writ petitions:

5. It is not in dispute that pursuant to the resolution no. 1 taken on 04.06.1997 by the Executive Committee of Balashi LP School in its Meeting No. 19, the Secretary of the said school, by his letter dated 05.06.1997, informed the petitioner that he was appointed as Third (3rd) Assistant Teacher in the Balashi LP School. However, in the writ petition, it is incorrectly pleaded that the petitioner was appointed as the 2nd Assistant Teacher, which is inconsistent with the herein before referred letter dated 05.06.1997 (Annexure-1 to WP(C) 1177/2015). The said school was then a venture lower primary school.

6. It is also the admitted case of the petitioner that the private respondent was appointed as the First (1st) Assistant Teacher in the said School in the year 1996 by the School Managing Committee. The Addl. Deputy Commissioner (Edn), Dhubri, by letter dated 01.08.2012, requested the District Elementary Education Officer, Dhubri (DEEO for short) to take action as per report of the then Deputy Inspector of Schools, Dhubri (hereinafter referred to as DIS, Dhubri for short) submitted in the case of Ismail Ali Sk (i.e. petitioner) of Balashi LP School. Thereafter, vide order dated 20.10.2012, issued by the DEEO, Dhubri, the said authority gave his finding that in the said school, Mohammad Ali was appointed on 03.02.1985, the private respondent was appointed as Assistant Teacher on 10.03.1991 and the petitioner was appointed

as 2nd Assistant Teacher on 10.03.1997. It was also held that the private respondent was rendering service as Anganwadi Helper at 71 No. Balashi LP School, where she worked from February, 2002 to 26.06.2011 and that she resigned as Anganwadi Helper on 27.06.2011 and that during the said period, she performed her duties in school, where working hours is from 10.00 am to 3.00 pm and the working hours in Anganwadi Centre is from 8.00 am to 12.30 pm., which is not permissible as per Government rules and that she had received her remuneration from Anganwadi Centre and F.A. from the school. Accordingly, the School Managing Committee was directed to take action as it was competent authority for appointment/ upgradation/ degradation/ disciplinary action, etc. against teaching and non-teaching staff in respect of venture school. The said order was followed by a letter dated 05.11.2012 by the DEEO to the President of the School Managing Committee and its Headmaster to take action as per letter dated 20.10.2012 and to submit compliance report.

7. Consequently, the Headmaster of the said School issued a show-cause notice dated 15.11.2012 to the private respondent, to which show-cause reply dated 20.12.2012 was submitted. The School Managing Committee in its meeting held on 22.11.2012 by resolution no. 1 decided to promote the petitioner to 1st Assistant Teacher and resolved to downgrade the private respondent as 2nd Assistant Teacher and give her appointment from 27.06.2011. By resolution no. 2, power was given to the Headmaster to delete the name of the private respondent as 1st Assistant Teacher from revised application form, DISE Code and to include her name as the 2nd Assistant Teacher, and to delete the name of the petitioner as 2nd Assistant Teacher and to include his name as 1st Assistant Teacher of the school. Accordingly, compliance report was

submitted by the Headmaster vide letter dated 23.11.2012.

8. The private respondent, who was aggrieved by the action of the respondents, approached this Court by filing W.P.(C) 361/2013 and this Court, by order dated 12.12.2013, disposed of the writ petition by directing that the DEEO, Dhubri shall refer the matter to the District Level Redressal Committee to resolve the dispute relating to wrong upgrading of the petitioner as 1st Assistant Teacher, by providing that the order/resolution dated 22.11.2012 and 23.11.2012 shall be subject to the final outcome of the exercise to be carried out by the District Level Redressal Committee.

9. Thereafter, the Deputy Director, Elementary Education, Assam, by the impugned letter dated 29.01.2015, informed the DEEO, Dhubri that the matter of the private respondent cannot be considered as she was working as A.W.C. under Social Welfare Department and the matter of the petitioner cannot be considered as the School Managing Committee had no power to promote or degrade any one of the teaching and non-teaching staff after 01.01.2011 as per the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, as amended in 2012. The said letter is assailed in W.P.(C) 1177/2015.

10. The additional facts in the proceeding of W.P.(C) 5209/2016 is that during the pendency of the W.P.(C) 1177/2015, the DEEO, Dhubri [arrayed as respondent no. 5 in W.P.(C) 5209/2016] had recommended the name of the private respondent for provincialisation and accordingly, the service of the private respondent was provincialised by virtue of orders passed by the Director of Elementary Education, Assam. The case of the petitioner is that while provincialising the service of the private respondent, the report dated

10.07.2012, submitted by the Deputy Inspector of Schools, Dhubri ("DIS, Dhubri" for short) was ignored by the DEEO, Dhubri.

Stand of the private respondent:

11. By filing affidavit-in-opposition, the private respondent has pleaded that at the relevant point of time, the Anganwadi Centre as well as the Balashi LP School were operating from the same campus. It was also pleaded that the time table for operating Anganwadi Centre was fixed for the first time in 2011 and thus, as both establishments were at same campus, and the Anganwadi Centre was operating during morning hours, there was no overlapping of duties. It was also pleaded that the DIS, Dhubri did not have any authority to interfere in the functioning of the venture school and that his letter dated 30.06.2011 was issued in violation of the principles of natural justice. It was pleaded that the private respondent was not provided any opportunity to participate in the enquiry done by the DIS, Dhubri. It was also pleaded that the private respondent had resigned as Anganwadi Helper on 27.06.2011 and that for rendering her service as Anganwadi Helper, she was paid only a lump sum amount and that during such time, the venture school was not receiving any financial assistance from the Government and that for serving in the said school, she was not paid any remuneration till May, 2011.

Submissions by the learned senior counsel for the petitioner:

12. It has been submitted that the clear direction by this Court vide order dated 12.12.2013 in W.P.(C) 361/2013 was to the effect that the DEEO, Dhubri shall refer the dispute before the District Level Redressal Committee for resolution, but such process was not adopted by the said authority, for which the impugned orders were liable to be interfered with.

13. It is also submitted that as per clause 4 of the appointment of the private respondent order dated 24.08.2016, it has been specifically provided to the effect that no provincialisation order will be affected (*sic. should have been effective*) in case of schools having any Court cases in connection with appointment of teachers, dispute on land, absence of DISE code upto 2009 and others, in conformity with the provisions of "The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, amendment 2012" (hereinafter referred to as the "2011 Act" for short). Accordingly, it is submitted that the appointment order in respect of the private respondent could not have been made effective. It is submitted that in any event as the case was not deferred to the District Level Redressal Committee, this is a fit case to remand the matter back to the authorities for having the dispute between the petitioner and the private respondent resolved by the District Level Redressal Committee in terms of order dated 12.12.2013 passed in the WP(C) 361/2013. In respect of his submission, the reliance is placed on the case of *Akaddas Ali v. State of Assam & Ors., 2014 (4) GLT 55* and *Fakar Uddin Laskar (Md.) & Ors. v. State of Assam and Ors., 2016 (5) GLT 187*.

Submissions by the learned standing counsel for the Elementary Education Department:

14. The learned standing counsel for the Elementary Education Department has submitted that the 2011 Act has been struck down by this Court and thereafter the 2017 Act was enacted by the State. It is submitted that as per the decision of this Court in the case of *Purnabati Brahma v. The State of Assam and Ors., WA 283/2019* decided on 13.11.2019, the issue and/or dispute relating to provincialisation of service was required to be resolved as per the

2017 Act.

Submissions by the learned counsel for the private respondent:

15. The learned counsel for the private respondent has submitted that till May, 2011, the petitioner was working without being paid any remuneration in the school concerned and that financial help started coming from the month of May, 2011, immediately the private respondent had resigned as Anganwadi Helper on 27.06.2011. It is submitted that in both the services rendered by the private respondent, i.e. Anganwadi Helper and as Assistant Teacher in the Venture school, the private respondent was doing an honorary job and there was no working hours in the Anganwadi Centre and working hours came into effect by virtue of notification dated 26.05.2011. It is submitted that the said notification dated 26.05.2011, the time was fixed was applicable only on if the Anganwadi Centre operated in their permanent building, club building or own premises under ICDS Scheme. Hence, it is submitted that the said notification dated 26.05.2011 was not applicable in this case as the Anganwadi Centre and the school were both being operated from the same premises. It is submitted that this Court, on an erroneous submissions made by the learned standing counsel for the Elementary Education Department had accepted the submission to the effect that by notification dated 30.01.2013, the State Government has appointed District Level Redressal Committee and State Level Redressal Committee and accordingly, it was directed that the exercised be carried out by the District Level Redressal Committee. By referring to the provision of Section 10 as well as Section 10(8) of the erstwhile 2011 Act, it is submitted that the said "District Scrutiny Committee" as provided under the said Act was the appropriate authority constituted to scrutinize the service record and other related issues of the serving teachers and staff of venture educational

institution pertaining to provincialisation of their services, which was not vested with the District Level Redressal Committee.

16. It may be mentioned that the learned Senior Counsel for the petitioner had produced the copy of notification dated 20.02.2014 issued by the Government of Assam, Elementary Education Department, which contained a reference to the notification dated 30.01.2013. Accordingly, by order dated 25.04.2023, the Court had directed the learned standing counsel for the Elementary Education Department to produce the said notification dated 30.01.2013, which was erroneously recorded in the order as 31.01.2013. The said notification was produced by the learned standing counsel for the Education (Elementary) Department. The learned counsel for the private respondent, by referring to the said notification dated 30.01.2013, had submitted that the Grievance Redressal Committee at State and District Level was constituted to address the grievances with regard to the application for provincialisation/ financial assistance from the government including allotment of DISE code and change/ correction of Management authorities as shown in the DISE records and therefore, it was submitted that the District Level Redressal Committee did not have any empowerment to adjudicate the *inter se* dispute relating to upgrading of the status of the petitioner as 1st Assistant Teacher and down-grading of the status of the private respondent to that of 2nd Assistant Teacher and/or their respective claim to provincialisation. Hence, it is submitted that under the altered/ changed circumstances which had taken place by striking down of the 2011 Act and enactment of the 2017 Act, the claim for provincialisation can only be examined as per the 2017 Act. Hence, it is submitted by the learned counsel for the private respondent that if the matter is

remanded for a fresh adjudication by the District Level Redressal Committee in terms of order dated 12.12.2013 passed in WP(C) 361/2013, it would cause the private respondent to suffer irreparable prejudice. In support of his submissions, the learned counsel for the private respondent placed reliance on the case of *Ramankutty Guptan Vs. Avara, AIR 1994 SC 1699*.

Reasons and decision:

17. Considered the materials available on record in WP(C) 1177/2015, affidavit in opposition filed by respondent no.8, reply affidavit filed by the petitioner and in the proceedings of WP(C) 5209/2016, considered the writ petition, additional affidavit filed by petitioner, affidavit filed by respondent no.9 reply affidavit filed by petitioner and another affidavit-in-opposition filed by respondent no. 9.

18. It is observed that this Court had placed reliance on the submissions made by the learned standing counsel for the Elementary Education Department to the effect that the State Government had appointed District Level Redressal Committee and State Level Redressal Committee and thereafter, directed that the exercise to determine the dispute between the petitioner and the private respondent to be examined by the District Level Scrutiny Committee. It would be relevant to quote the contents of order dated 12.12.2013 in WP(C) 361/2013.

“The dispute raised in this writ petition relates to provincialisation of the services of the teaching staff of Balashi L.P. School. According to the petitioner, there was wrong upgradation of respondent No. 8 to the post of 1st Assistant Teacher vide Resolution of the Managing Committee dated 22.11.2012.

Mr. B. Choudhury, learned Standing counsel, Education, submits that since the subject-matter involves disputed questions of fact, the same is required to be scrutinized by the appointed committees.

In this connection, he has referred to the Notification dated 03.01.2013 by

which the State Government has appointed District Level Redressal Committee and State Level Committee. In view of the above, the writ petition is disposed of providing that the DEEO, Dhubri, shall refer the matter to the District Level Redressal Committee towards resolving the dispute as has been raised in the writ petition. Let the dispute be resolved as expeditiously as possible. Needless to say that the impugned orders/resolutions, dated 23.11.2012 (Annexure-13 to the writ petition) and dated 22.11.2012 (Annexure-12 to the writ petition) shall be subject to the final outcome of the exercise to be carried out by the District Level Redressal Committee."

19. The provision of Section 10 of the erstwhile 2011 Act makes it clear that the said provision provides for an appropriate mechanism for the redressal of *inter se* dispute regarding respective claims made by the Assistant Teachers for provincialisation of their services. The said provision is quoted below:-

“10. District Scrutiny Committee.- (1) *There shall be one District Scrutiny Committee in each district separately for Elementary, Secondary and for Higher Education to scrutinize service records and other related issues of the serving teachers and staff of Venture Educational Institutions pertaining to provincialisation of their services.*

(2) *The Deputy Commissioner of the District, by an order, shall constitute the District Scrutiny Committee for the respective district under preceding sub-section.*

(3) *The District Committee shall first scrutinize and prepare a list of all Venture Educational Institutions within the district, which are eligible in terms of the provisions of this Act and shall thereafter proceed to scrutinize and verify the service records of all the serving employees, who are eligible or would become eligible for being considered for provincialisation of their services.*

(4) *The District Scrutiny Committee shall forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the Schedule appended to this Act, to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialised.*

(5) *The District Scrutiny Committee shall have the powers to inspect all documents and records produced before it and call for such further records and documents as may be required for the purpose of causing verification and scrutiny and examine*

witnesses for the purpose, if considered necessary and while doing so it shall have the powers of a Civil Court for the purpose of compelling attendance of persons and production of documents.

(6) The District Scrutiny Committee for Higher Education shall be constituted with the following members, namely:-

- (i) The Deputy Commissioner or his nominee not below the rank of Additional Deputy Commissioner of the concerned district Chairman;
- (ii) The Inspector of Schools --- Member-Secretary;
- (iii) One Principal of College to be nominated by the Inspector of Schools Members;
- (iv) One retired Principal of College to be nominated by the Inspector of Schools Member;
- (v) One eminent person in the field of education to be nominated by the Deputy Commissioner- Member.

(7) The District Scrutiny Committee for Secondary Education all be constituted with the following members, namely:-

- (i) The Deputy Commissioner or his nominee not below the rank of Additional Deputy Commissioner of the concerned district Chairman;
- (ii) The Inspector of Schools Member-Secretary;
- (iii) One Principal of Junior College to be nominated by the Inspector of Schools Member;
- (iv) One Principal of Provincialised Higher Secondary School to be nominated by the Inspector of Schools Member;
- (v) One Headmaster of Provincialised High School/High Madrasa to be nominated by the Inspector of Schools - Members;
- (vi) One eminent person in the field of education to be nominated by the Deputy Commissioner --- Member;
- (vii) One retired Principal/Headmaster to be nominated by the Inspector of Schools Member.

(8) The District Scrutiny Committee for Elementary Education all be constituted with the following members, namely:-

- (i) The Deputy Commissioner or his nominee not below the rank of Additional Deputy Commissioner of the concerned district--- Chairman;
- (ii) The District Elementary Education Officer; Member-Secretary;
- (iii) The Deputy Inspectors of Schools of all Sub-divisions -. Members;
- (iv) The Block Elementary Education Officer of all Blocks -- - Members;
- (v) One eminent person in the field of education to be nominated by the Deputy Commissioner --- Member.

(9) The State Government may, by an order re-constitute the strict Scrutiny Committee or may change its composition, if e circumstances so warrant.

(10) The Deputy Commissioner in relation to Districts included Sixth Schedule Areas shall mean the Principal Secretary of the respective Councils."

20. It would also be appropriate to quote the relevant part of the herein before referred notification dated 30.01.2013:-

*“GOVERNMENT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR, GUWAHATI-6*

*ORDERS BY THE GOVERNOR OF ASSAM
NOTIFICATION*

Dated: Dispur, the 30th January, 2013

No. ELC/WP(C) 5028/554/17: The Governor of Assam is pleased to constitute the Grievance Redressal Committees both in State and District Level (excluding 6th Schedule Areas of Districts) to address the grievances with regard to applications for provincialisation/ financial assistance from Government including allotment of DISE code and change/ correction of management authority as shown in DISE records with the following members:

State Level Redressal Committee

- 1. Joint Secretary to Govt. of Assam, Education (Elementary) Deptt: Chairman*
- 2. Director, Elementary Education, Assam: Member-Convenor*
- 3. Director, SCERT, Assam: Member*
- 4. Secretary, SEBA: Member*
- 5. Sr. Financial Advisor, Elementary Education, Assam : Member*
- 6. System Analyst (MIS), SSA, Assam: Member*

District Level Redressal Committee

- 1. Deputy Commissioner (of concerned Districts): Chairman*
- 2. District Elementary Education Officer: Member-Convenor*
- 3. Principal DIET/BTC/Normal School: Member*
- 4. Finance & Accounts Officer (D.C. Office): Member*

Terms of reference of the State Level Redressal Committee

- 1. To dispose of the appeal received from the Head of Institutions who was aggrieved by the decision of the District Redressal Committee.*
- 2. To dispose of the appeal within a period of four weeks from the date of receipt of appeal petition after examination of various relevant documents related to the prayer.*
- 3. To provide sufficient opportunity to the applicant of being heard.*

Terms of reference of the District Level Redressal Committee

1. *To dispose of the appeal received from the Head of the Institution who was aggrieved by the decision of District level Scrutiny Committee of the district concerned*
2. *To dispose of the appeal within a period of six weeks from the date of receipt of appeal petition.*
3. *To provide sufficient opportunity to the applicant of being heard.*

The Committees above will not recommend for assigning DISE code for a year that has already lapsed; rather if upon examination of the claim/appeal, with due physical verification, it is satisfied that a school is existing at present, it may recommend assigning of DISE code for the concerning current year only.

Finally, if any Head of Institution is not satisfied with the decision of State Level Redressal Committee, it will be obligatory for the concerned Institution to appeal before the Civil Court of the concerned District for seeking necessary relief/justice."

21. Thus, it is apparent that this Court, by relying on a factually incorrect submission made by the then learned standing counsel for the Elementary Education Department, ordered that the dispute between the petitioner and the private respondent be resolved by the District Level Redressal Committee, which is otherwise not the authority prescribed vide Section 10 of the erstwhile 2011 Act. Nonetheless, none of the parties to the said W.P.(C) 361/2013 approached this Court to have the matter clarified by this Court.

22. It is clarified that nothing contained in this order is intended to be construed that any comment has been made in this order on the correctness or otherwise of the order dated 12.12.2013, passed in W.P.(C) 361/2013. Nonetheless, as the 2011 Act was quashed, and the 2017 Act has been enacted, the effect thereof is that all rules and notifications issued thereunder cannot be saved. Thus, in the considered opinion of the Court, the matter cannot be now referred to be examined by the District Level Scrutiny Committee, which does not exist. If such an order is now passed, it would not be lawful. In this regard,

the Court is also conscious of the well settled legal proposition that a writ ought not to be issued to pass orders contrary to the law. If one needs an authority on the point, the case of *Union of India v. Kirloskar Pneumatic Co. Ltd., (1996) 4 SCC 453*, may be referred to. Therefore, the proper recourse would be to decide the *inter se* dispute between the petitioner and the private respondent on merit.

23. Upon a pointed query of the Court as to whether or not there was any provision in the 2011 Act, which empowered the DIS, Dhubri to direct the Headmaster/ Head Teacher of Balashi LP School to take steps against the private respondent and to direct that she be removed from the post of Assistant Teacher of the said school and to upgrade the petitioner, the learned standing counsel for the Education (Elementary) Department had replied in the negative. The learned senior counsel for the petitioner also could not show vesting of such a power on the authorities under the 2011 Act.

24. By letter dated 30.06.2011, the DIS, Dhubri had directed the Head Teacher of Balashi LP School to take steps against the private respondent and to remove her from the post of Assistant Teacher of the said school and to upgrade the petitioner. From the contents of the enquiry report, contained in letter dated 10.07.2012, by the DIS, Dhubri, which is addressed to the DEEO, Dhubri, *prima facie* it appears that the said enquiry was conducted on the strength of DEEO's letter no. EED-169/Pt.VIII/ 2011/ 6607 dated 07.03.2012. It also appears that on receipt of complaint from the petitioner, the DIS, Dhubri had written to the Child Development Project Officer, Golakganj (CDPO, Golakganj for short) to find out whether the private respondent was working as Anganwadi Helper and the CDPO, Golakganj, by his letter dated 24.05.2011, had informed the DIS, Dhubri that the private respondent had worked as

Anganwadi Helper from February, 2002 to 24.05.2011. It appears that the Addl. Deputy Commissioner (Edn), Dhubri [ADC(Edn) for short], by letter dated 01.08.2012, had directed the DEEO, Dhubri to take action as per report of the DIS, Dhubri submitted in the case of the petitioner. Thereafter, the DEEO, Dhubri, by an order dated 20.10.2012, made observations to the effect as if the said authority had held the private respondent to be guilty and directed the School Managing Committee to take action as per Govt. Rules. The said order was followed by letter dated 05.11.2012 by the DEEO, Dhubri to the President of the School Managing Committee (SMC for short) and to the Head Teacher of Balashi LP School to take action and report compliance for onward transmission to the Deputy Commissioner, Dhubri. Thus, it is seen from these series of communications referred to above that while the authorities like (i) Deputy Commissioner, Dhubri, (ii) ADC (Edn), Dhubri, (iii) DEEO, Dhubri, (iv) DIS, Dhubri, and (v) CDPO, Golakganj were all communicating with each other in the matter of the private respondent, based on the complaint made by the petitioner, but it did not occur to any of these responsible authorities that they had not put the private respondent to notice to defend herself. Resultantly, the DEEO, Dhubri gave an *ex parte* finding against the private respondent, holding her guilty, and then directed the School Managing Committee and the Head Teacher of Balashi LP School to remove the private respondent. The said authority, apparently, in excess of powers vested on him had threatened the Head Teacher of action against him if needful was not done. Thus, in the considered opinion of the Court, none of the above referred communications *inter se* amongst the (i) Deputy Commissioner, Dhubri, (ii) ADC (Edn), Dhubri, (iii) DEEO, Dhubri, (iv) DIS, Dhubri, and (v) CDPO, Golakganj and those made by the said authorities to the (a) SMC, and (b) Head Teacher, Balashi LP School

regarding action to be taken against the private respondent can be said to be done in lawful exercise of power.

25. Thus, the above discussions clearly demonstrate that by denying opportunity to the private respondent of being heard, she was held guilty. The said letter dated 30.06.2011 cannot be said to be lawful because the DIS, Dhubri, instead of advising the authorities of Balashi LP School to initiate disciplinary proceeding against the private respondent, threatened the Head-Teacher of the said school of "legal action" for allowing the private respondent to work in the school as Assistant Teacher. Therefore, the then DIS, Dhubri converted himself to be the all-in-one prosecutor, judge, and executioner, who did not deem it appropriate to give an opportunity to the private respondent before condemning her. Such an action has to be disapproved by the Court, which the Court hereby does by holding that the action taken against the private respondent reflects blatant abuse of the power by the DEEO, Dhubri and the DIS, Dhubri.

26. The private respondent has admitted that she was rendering service as Anganwadi Helper, but in none of the documents available in the record, any authority like (i) Deputy Commissioner, Dhubri, (ii) ADC (Edn), Dhubri, (iii) DEEO, Dhubri, (iv) DIS, Dhubri, and (v) CDPO, Golakganj recorded how much payment was being made to the private respondent for working as Anganwadi Helper and Assistant Teacher of the Balashi LP School, when the said school was in the venture stage. The herein before referred authorities also did not record in any of their communication that the Anganwadi Centre and the Balashi LP School (then in venture stage) were running from same campus. None of the said authorities had referred to any notification or order prescribing

working hours for Anganwadi helpers from year 2002 to 24.05.2011. No finding was recorded by any authority referred to herein before that prior to 24.05.2011, the SMC of Balashi LP School had warned the private respondent of indiscipline or not rendering service during duty hours. Similarly, none of the correspondence made by the respondent authorities on record, including letter dated 30.06.2011 discloses that any of the said authorities including the DEEO, Dhubri and DIS, Dhubri had consulted any act, rules, OMs or notification prohibiting Anganwadi Helper to take up any other employment during their service career as Anganwadi Helper.

27. The learned senior counsel for the petitioner and the learned standing counsel for the Elementary Education Department have not been able to show that the post of Anganwadi Helper is a "Civil Post" under the Government of Assam as envisaged under Rule 2(e) of the Assam Services (Discipline and Appeal) Rules, 1964. Similarly, no effort was made to show that on the dates when directions were issued by the various authorities in the Elementary Education Department to the SMC as well as the Head Teacher of Balashi LP School to terminate the service of the private respondent, she was holding any "Civil Post" under the Government of Assam and receiving salary from the State.

28. It is surprising to note although the DEEO, Dhubri, by his order dated 20.10.2012, had directed that action should be taken as per Government Rules, the said authority remained silent when without following any Government Rules relating to disciplinary enquiry, the private respondent was downgraded by the School Managing Committee as 2nd Assistant Teacher and the petitioner, who was in fact the 3rd Assistant Teacher, was upgraded as 1st

Assistant Teacher by changing the date of appointment of the private respondent to 27.06.2011. It could not be shown by the learned senior counsel for the petitioner or the learned standing counsel for the Elementary Education Department that there is any law covering venture educational institutions to impose the punishment as imposed on the private respondent. It would not be shown that the SMC of Balashi LP School had the power or authority under any law in force to alter the date of joining of the private respondent. Thus, the resolution taken by the SMC of Balashi LP School to upgrade the petitioner to 1st Assistant Teacher and downgrade the private respondent to 2nd Assistant teacher is manifestly and/or inherently illegal. Moreover, in light of the provisions of the erstwhile 2011 Act, the learned senior counsel for the petitioner could not demonstrate that after 01.01.2011, the SMC had the power to take action against the private respondent, whose service was otherwise ripe to be provincialised, but for the action taken against her by the SMC. Moreover, it is to be noted that the petitioner in this his petition has shown his appointment as 3rd Assistant Teacher of the Balashi Venture Primary School on 05.06.1997, whereas by order dated 20.10.2012, issued by the DEEO, Dhubri, it is stated that the appointment of the petitioner to the post of 2nd Assistant Teacher was on 10.03.1997. Thus, the Court finds that the appointment of the petitioner, perhaps, needs further examination by the authority of the Elementary Education Department.

29. It was submitted that in view of clause 4 of the order of provincialisation dated 24.08.2016, the said order could not be made effective. We cannot agree to the said proposition because of the fact that the petitioner could not demonstrate that there was any litigation and/or Court cases in

connection with appointment of teachers, dispute on land, absence of DISE code upto 2009. The learned senior counsel for the petitioner could not show that the proceeding of W.P.(C) 1177/2015, can be said to be a Court case of the nature referred to in the said order dated 24.08.2016.

30. It may be mentioned that one limb of submissions of the learned senior counsel for the petitioner is that as this Court was in seisin of W.P.(C) 1177/2015, the respondent authorities could have taken up a parallel proceeding and provincialise the service of the private respondent, and reliance was placed on the case of *Akaddas Ali (supra)*, and *Fakar Uddin Laskar (supra)*. We are unable to accept the submission because by filing W.P.(C) 1157/2015, the petitioner had challenged the order dated 29.03.2016, for only that part which had adversely affected him. The petitioner had not assailed the said order in so far it adversely affected the private respondent. Therefore, although the private respondent was impleaded, no effective relief was claimed against her. The petitioner had not prayed for any interim order in W.P.(C) 1177/2015 to restrain the authorities in the Elementary Education department not to deal with the claim of the private respondent for provincialisation. Therefore, this cannot be accepted to be a case where during the pendency of W.P.(C) 1177/2015, parallel adjudication was taken up by the authorities in the Elementary Education Department. Therefore, both the cases cited by the learned senior counsel for the petitioner do not help the petitioner.

31. Therefore, in light of the discussions above, there are no materials before the Court from which it could be shown that the impugned order no. EPD/H/16/2016/52 dated 24.08.2016, issued by the Director, Elementary Education, Assam, by which the service of the private respondent,

namely, Saleha Khatun, Assistant Teacher, Balashi LP School was provincialised, is bad and/or contrary to law. Therefore, the challenge to the said impugned order in W.P.(C) 5209/2016 fails. Moreover, for the same reason, the Court is of the considered opinion that the petitioner has not been able to make out a case for interference with the order no. EPD/H/294/2014/8 dated 29.01.2015, issued by the Deputy Director of Elementary Education, Assam, refusing to consider the case of the petitioner, namely, Ismail Ali Sk for provincialisation. Therefore, the challenge made in W.P.(C) 1177/2015 also fails.

32. Resultantly, both the writ petition fails and are dismissed. No costs. The interim order passed in WP(C) 5209/2016 stands vacated.

JUDGE

Comparing Assistant