

GAHC010016332023



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

Case No. : WP(C)/480/2023

MUSTAQUE AHMED
S/O- LATE MUBARAK ALI,
VILL- GOROIMARI,
P.O.- GOROIMARI,
P.S.- LAHARIGHAT,
DIST.- MORIGAON (ASSAM).

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
SCHOOL EDUCATION DEPARTMENT,
DISPUR, GUWAHATI- 06.

2:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS
MORIGAON DISTRICT CIRCLE
DIST.- MORIGAON (ASSAM).

4:THE DISTRICT SCRUTINY COMMITTEE
MORIGAON
FOR PROVINCIALISATION OF SERVICE OF TEACHING AND NON-
TEACHING STAFF UNDER THE 2017 ACT
MORIGAON DISTRICT TO BE REPRESENTED BY ITS CHAIRMAN CUM-
DEPUTY COMMISSIONER
DISTRICT- MORIGAON
ASSAM.

5:THE PRINCIPAL
NAGABANDHA JUNIOR COLLEGE
VILL. NAGABANDHA

P.O.- NAGABANDHA

DIST.- MORIGAON (ASSAM)

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

01-02-2023

Heard Mr. A.R.Bhuyan, learned counsel for the petitioner and Mr. R. Mazumdar, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 3. Also heard Ms. D.D.Barman, learned Government Advocate, Assam for the respondent No. 4.

It is submitted by the petitioner that the Assam Higher Secondary Education Council by its order dated 23.12.1998 accorded permission to introduce the subjects of Hindi as M.I.L. and Arabic in Nagabandha Junior College, District-Morigaon renamed as Nagabandha Senior Secondary School, a provincialised Secondary School of the State from the Session 1998-1999.

The State Government in the Secondary Education Department vide communication No. ASE.73/2005/39 dated 28.12.2005 granted concurrence to the subjects of Hindi (MIL) and Arabic in the 1st Year Higher Secondary Class with regard to said Nagabandha Sr. Sec. School.

Pursuant to the resolution dated 13.03.2006 adopted by the Managing Committee of said Nagabandha Sr. Sec. School, the Secretary of said School by order under Memo No. NC 06/02 dated 16.03.2006 appointed the petitioner as a Lecturer to the Sectional Post in its Arabic Department and in pursuance of the said order dated 16.03.2006, the petitioner joined the said School on 22.03.2006 as a Lecturer in the Department of Arabic.

Considering the number of enrollments of students in 1st Year Higher Secondary Class as 141,

171 and 181 for the Academic Sessions 2014, 2015, 2016 respectively and 118, 155 & 169 in the 2nd year H.S. Class for the Academic Sessions 2014, 2015 & 2016 respectively in the said Sr. Sec. School, the District Level Scrutiny Committee for Secondary Education, Morigaon, recommended the name of the petitioner for provincialisation of his service as a "Tutor" under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

Petitioner stated that inspite of said recommendation of the District Level Scrutiny Committee for Secondary Education, Morigaon, the State Level Scrutiny Committee for Secondary Education did not recommend his name for provincialisation of his service under the said 2017 Act as amended.

It is also stated by the petitioner that he submitted a representation on 08.02.2021 before the Director of Secondary Education, Assam through the Principal of said Nagabandha Sr. Sec. School requesting the DSE, Assam to consider his case for provincialisation of service under the said 2017 Act, which is still pending for disposal.

The petitioner has brought to the notice of the Court that the Inspector of Schools, Morigaon District Circle, Morigaon vide communication No. MDC/PC/MISC/Pt-2/2020/124/541 dated 11.02.2021 requested the Director of Secondary Education, Assam that amongst those 11 incumbents whose names were dropped that includes the name of the petitioner, he should be considered for provincialisation in the Department of Arabic in said Nagabandha Sr. Sec. School, as his name was in the U-DISE Code and also considering the numbers of enrollments of students as 259, 326 & 360 for the years 2014, 2015 & 2016 respectively.

It is stated that inspite of such recommendation of the District Level Scrutiny Committee for Secondary Education, Morigaon as well as the request made by the Inspector of Schools, Morigaon District Circle, Morigaon dated 11.02.2021, the State level Scrutiny Committee did not recommend his name for provincialisation of service as a Tutor of Arabic. As such, the petitioner has filed this writ petition on 25.01.2023 praying amongst others for direction to the respondent authorities, more particularly, the Commissioner and Secretary to the Government of Assam in the Secondary Education Department and the Director of Secondary Education, Assam to dispose of the representation dated 08.02.2021 as well as to do the needful for the purpose of provincialisation of his service as a Lecturer in the department of Arabic in the said Sr. Sec. School by taking into account the Enquiry Report dated 11.02.2021 submitted by Inspector of Schools, Morigaon District Circle, Morigaon.

Section 14 of said 2017 Act relates to "Appellate Authority" which stipulates 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 an appeal under Section 14 of the said 2017 Act enclosing a certified copy of this order along with the relevant documents and a copy of this writ petition including the annexures appended thereto, stating his grievances before the Secretary to the Government of Assam in the Department of School (Secondary) Education, forthwith.

After giving an opportunity of hearing to the petitioner and on verifying the relevant documents, records and following the provisions of said 2017 Act as well as the relevant rules in force, the Secretary to the Government of Assam in the Department of School (Secondary) Education shall dispose of the said appeal of the petitioner by passing a reasoned order within a period of 90 (ninety) days from the date of receipt of such appeal of the petitioner.

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

JUDGE

Comparing Assistant