

GAHC010017862023



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

**Case No. : WP(C)/493/2023**

MD KAMAL UDDIN AHMED  
S/O- MD. SAMSUDDIN KARI,  
PERMANENT RESIDENT OF ,  
VILL- BHUYANBARI PATHER,  
P.O- SATIANTOLI,  
P.S- LAHARIGHAT,  
DIST- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY), DISPUR,  
GUWAHATI, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION  
KAHILIPARA GUWAHATI-19

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE  
MORIGAON  
TO BE REP. BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER  
MORIGAON DIST- MORIGAON  
ASSAM

4:INSPECTOR OF SCHOOLS  
MORIGAON DISTRICT CIRCLE  
MORIGAON  
DIST- MORIGAON ASSA

**Advocate for the Petitioner : MR. A R BHUYAN**

**Advocate for the Respondent : SC, SEC. EDU.**

**BEFORE**  
**HON'BLE MR. JUSTICE UNNI KRISHNAN NAIR**

**05.12.2023**

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel, Secondary Education Department, for the respondents.

**2.** The petitioner, who was appointed as Lecturer in the Department of Political Science of Laharighat Junior College, Morigaon on 24.12.2010, when it was in the venture stage, has instituted the present proceedings assailing the speaking order dated 26.09.2022 issued by the Director of Secondary Education, rejecting his claim for provincialisation of his services under the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, as amended in 2018 (hereinafter referred to as '2017 Act'). It is the case of the petitioner that although initially he was the holder of third post in the Department of Political Science of the Junior College in question, subsequently the governing body upgraded his services and he was placed in the second post in the Department of Political Science of the said college. The services of the employees in the college in question came to be provincialised under the 2017 Act by an order dated 04.02.2021 but, the services of the petitioner was not provincialised. Against the Department of Political Science, two persons were provincialised as Tutors. Making the grievance against such denial of benefit of provincialisation to him, the petitioner has approached this Court by instituting WP(C) 4432/2021. This Court vide order dated 10.09.2021 disposed of the said writ petition requiring the

Director of Secondary Education, Assam to pass reasoned order dealing with the grievance of the petitioner. Accordingly, the Director of Secondary Education vide her order dated 26.09.2022, considered the representations submitted by the petitioner in terms of the order passed by this Court and concluded that the petitioner's service could not be considered for provincialisation. Accordingly, the present proceedings have been instituted. It is the stand of the petitioner that he being in the second post, was entitled to provincialisation of his services.

**3.** I have heard the learned counsel for the parties and considered the materials available on record. The plea of the petitioner that he was holding the second post, as per the adjustment made by the Managing Committee during venture stage, may be a fact, but from the order dated 04.02.2021, it is seen that one Md. Faijur Rahman, who was the Headmaster of the Junior College in question at the venture stage, was provincialised as Tutor in the Department of Political Science along with one Md. Mojibur Rahman, who was also provincialised as Tutor in the Department of Political Science. As such, two persons were provincialised in the Department of Political Science. Learned counsel for the petitioner has submitted that provisions of the 2017 Act, more particularly, provisions of Section 3(1)(vii) read with Section 3(1)(ix) permit provincialisation of teachers against additional post subject to fulfillment of the conditions prescribed therein. Without entering into the actual intent and purport of the provisions of Section 3(1)(ix) with regard to the provincialisation against additional post, this Court is of the view that the petitioner has a legal right to at least persuade the authorities by placing relevant materials on record that he comes within the purview of Section 3(1)(ix) of the 2017 Act.

**4.** In view of the above, we require the petitioner to prefer an appeal under Section 14 of the 2017 Act before the Secretary, Department of School

Education, Assam, raising therein his claim for being considered for provincialisation against an additional post.

**5.** In the event the petitioner preferring such an appeal, the appellate authority shall consider the same strictly in accordance with the provisions of the 2017 Act, Rules and/or Notifications issued thereunder and thereafter, pass a speaking order on the matter within a period of two months from the date of receipt of such appeal.

**6.** It is made clear that by observing that the petitioner has a legal right to be considered, this Court does not mean that it has determined a right in favour of the petitioner that he should be provincialised or that he should not be provincialised. By the expression 'consider', this Court means that the authorities are required to make an application of mind and pass a reasoned order on its own merit for determining the provincialisation of the writ petitioner.

The writ petition is, accordingly, disposed of.

**JUDGE**

**Comparing Assistant**