

GAHC010018782022



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

Case No. : WP(C)/789/2022

SALEK AHMED AND 17 ORS
S/O MATASIM ALI, R/O VILL. KESHARKAPON, P.O. DHARAKUNA, DIST.
KARIMGANJ, ASSAM 788712

2: TAHER AHMED TALUKDAR
S/O NURUL HOQUE TALUKDAR
R/O VILL. AND P.O. RATABARI
DIST. KARIMGANJ
ASSAM

3: AMRUL HAQUE
S/O ABDUL MATLIB
R/O VILL. ATANAGAR
P.O. BAZARGHAT
DIST. KARIMGANJ
ASSAM
PIN 788733

4: SAHINUL ISLAM BARBHUIYA
S/O RAHMAT ALI BARBHUIYA
R/O VILL. GARMURA
P.O. GARMURA
DIST. HAILAKANDI
ASSAM.

5: MUKTADIR HUSSAIN
S/O ARJOMOND ALI
R/O VILL. AND P.O. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788735

6: FAYSAL AHMED
S/O ASHRAF HUSSAIN
R/O VILL. AND P.O. RATABARI
DIST. KARIMGANJ
ASSAM
PIN 788735

7: ALTAF HUSSAIN
S/O LATE ABDUL LATIF
R/O VILL. MANIKGANJ
P.O. MANIKGANJ
DIST. KARIMGANJ
ASSAM.

8: ASAB UDDIN
S/O MANU HAR ALI
R/O VILL. KADAI RGOOL
P.O. GULCHERRA
DIST. KARIMGANJ
ASSAM.

9: SHERENA BEGUM LASKAR
D/O FAIZUL HOQUE LASKAR
R/O VILL. KESHARKAPON
P.O. DHARAKUNA
DIST. KARIMGANJ
ASSAM 788712

10: MALIK AHMED
S/O MATASIM ALI
R/O VILL. KESHARKAPON
P.O. DHARAKUNA
DIST. KARIMGANJ
ASSAM 788712

11: KAMAL UDDIN
S/O LATE ALA UDDIN
R/O VILL. VERARPATTA
P.O. NILAMBAZAR
DIST. KARIMGANJ
ASSAM 788722

12: NEHARA BEGUM
W/O NOOR UDDIN
R/O VILL. AND P.O. NILAMBAZAR

DIST .KARIMGANJ
ASSAM
PIN 788722

13: MOKBUL ALI
S/O LATE AYUB ALI
R/O VILL. PATTAGRAM
P.O. DUHALIA
DIST. KARIMGANJ
ASSAM.

14: BEGUM HAMIDA CHOUDHURY
D/O ABDUS SHAHID CHOUDHURY
R/O VILL. JABDA
P.O. MANIKGANJ
DIST. KARIMGANJ
ASSAM.

15: SRIKANTA ROY
S/O SRI RANJIT KUMAR ROY
R/O VILL. PADMARPAR
P.O. GIRISHGANJ
DIST. KARIMGANJ
ASSAM.

16: MUJIA BEGOM
D/O TAHIR ALI
R/O VILL .DUBAKHAL KARIBARI
P.O. KAYASTAGRAM
DIST. KARIMGANJ
ASSAM.

17: ASIA BEGUM
W/O MUSLEH AHMED CHOUDHURY
R/O VILL. LATASHAIL
P.O. LAKHIBAZAR
DIST. KARIMGANJ
ASSAM.

18: MD. QUTUB UDDIN
S/O SUNA MIA
R/O VILL. PATIALA
P.O. PECHALA
DIST. KARIMGANJ
ASSAM PIN 78873

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI 6

2:THE DIRECTOR
ELEMENTARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY COMMISSIONER
DIST. KARIMGANJ
ASSAM.

4:THE DIST. ELEMENTARY EDUCATION OFFICER (DEEO)
DIST. KARIMGANJ ASSAM.

5:SARBA SIKSHA ABHIYAN ASSAM
(REPRESENTED BY THE MISSION DIRECTOR SSA ASSAM)
KAHILIPARA
GUWAHATI
ASSAM. PIN -781019

Advocate for the Petitioner : MR. M H LASKAR

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 04.12.2023

ORDER

Heard Mr. H. R. A. Choudhury, learned Senior Counsel, assisted by Mr. M. H. Laskar, learned counsel, appearing on behalf of the petitioners. Also heard Mr. R. Mazumdar, learned standing counsel, Department of School Education; and Mr. B. Choudhury, learned standing counsel, Samagra Shiksha/SSA, Assam, appearing on behalf of their respective respondents.

2. The petitioners by way of instituting this writ petition, have assailed the rejection of their cases for provincialization of services under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, on the ground that their names did not appear in the DISE Code up to the year 2011-12.

The petitioners were appointed as Head Teachers/ Assistant Teachers in various Venture Lower Primary Schools in Tea Garden areas of the District of Karimganj and the schools against which they were so engaged was in existence for the last 18-20 years. The petitioners' schools were captured in the DISE Data for the year 2009-2010 and prior thereto. They fulfilled the requisite length of service as mandated under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

The cases of the petitioners were placed before the District Level Scrutiny Committee(DLSC) upon carrying-out the exercise mandated under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, recommended their cases for provincialization and the matter was forwarded to the Director, Elementary Education Department, Government of Assam, for placement before the State Level Scrutiny Committee (SLSC).

It is the case of the writ petitioners that the State Level Scrutiny Committee(SLSC) had considered their cases and recommended them for provincialization of their services. However, the said recommendation was not taken to its logical conclusion and the cases of the petitioners were rejected as their names did not appear in the DISE Data up to the year 2011-12.

3. Mr. Choudhury, learned Senior Counsel representing the petitioners, submits that the petitioners fulfilled all the mandated requirements under the various provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and accordingly, their cases were required to be considered favourably.

Mr. Choudhury, learned Senior Counsel, contends that as is evident from the affidavit filed by the Director, Elementary Education Department, Government of

Assam, the District Elementary Education Officer, Karimganj, had submitted a proposal for provincialization of the petitioners' services in terms of the recommendations made in this direction by the District Level Scrutiny Committee(DLSC), Karimganj. It is the further contention of Mr. Choudhury, that the cases of the petitioners were rejected on account of certain observations made by a Joint Committee constituted by the Government for examining the proposal of provincialization of services of teachers.

Mr. Choudhury, learned Senior Counsel, by referring to the revelations made in this connection in the affidavit filed by the respondent No. 2, contends that the Joint Committee is not an authority prescribed under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, to consider the cases of eligible teachers for provincialization of their services. It is also contended that the particulars that had been sought for by the said Joint Committee is beyond the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. In short, Mr. Choudhury, learned Senior Counsel, submits that the consideration made by the Joint Committee is without jurisdiction.

4. Per contra, Mr. R. Mazumdar, learned standing counsel, Department of School Education, submits that the Joint Committee had acted in the manner strictly in accordance with the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational

Institutions) Act, 2017, and the particulars that were sought for, were so sought for, to come to a conclusion that the petitioners were in service after 2009-10, till the date, their cases for provincialization were so considered.

Accordingly, it is the contention of Mr. Mazumdar, learned standing counsel, that the names of the petitioners having not been captured in the DISE Data upto the year 2011-12; their cases for provincialization of their services was rightly rejected. It is the further contention of Mr. Mazumdar, learned counsel, that any dispute in this connection, a writ petition would not be maintainable and the petitioners are to avail their remedy under Section 14 of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the appeal before the State Government is to be preferred ventilating their grievances.

5. Mr. B. Choudhury, learned Standing Counsel, representing the respondent Samagra Siksha, Assam, refers to the affidavit filed by the Executive Director, Samagra Siksha, Assam, and contends that the DISE Data of the Teachers involved for the year 2008-09 till 2011-12 have been placed on record.

6. I have heard the learned counsels appearing for the parties and also considered the materials placed on record.

7. The issue involved in the present proceeding being the manner of

consideration of cases of the teachers for provincialization of their services under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the relevant provisions thereof, are quoted hereinbelow:

“2. Definitions:- In this Act, unless the context otherwise requires,-

(zb) “Venture Lower Primary School” or “Venture LP School” means a School imparting education up to Class V and established by the people of the locality prior to 1.1.2006 whose name figure in the DISE Code up to 2009-10 and prior to that and whereof the services of the teachers have not been provincialized under any Act enacted by the State Legislature so far:

Provided that the DISE Code shall have to be issued on or before 2009-10 and DISE Code issued thereafter shall not be considered for the purpose of provincialization of services of any employee of the institution.

3. Eligibility criteria for selection of educational institution for provincialization of services of teachers/tutors:-

(xii) The enrollment shall be verified with the data as per DISE Code 2009-10 or before as available in the records of the National University of Educational Planning and Administration, New Delhi. There shall be physical verification of students and checking of records of attendance of students of last three years.

13. District Scrutiny Committee and State Level Scrutiny Committee:-

(1) There shall be District Scrutiny Committees in each district separately for Elementary, Secondary and for Higher Secondary Education to scrutinize service records and other related issues of the serving teachers of Venture Educational Institutions pertaining to provincialization 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:

Provided that in the case of newly created districts, the Deputy Commissioner of the erstwhile district with the help of Deputy Commissioner of the newly created district shall scrutinize all cases of entire erstwhile district.

(5) The District Scrutiny Committee for Elementary 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 District Elementary Education Officer of the concerned district ---- Member-

Secretary;

(iii) One representative of the Deputy Commissioner of the newly created district if the institution falls within the jurisdiction of newly created district ---- Member;

(iv) The Deputy Inspector of Schools of all Sub-divisions within the concerned district ---- Members;

(v) The Block Elementary Education Officer of all Blocks within the concerned district ---- Members;

(vi) One eminent resident in the field of education who is an ordinary resident within the district to be nominated by the Deputy Commissioner---- Member.

(10) There shall be one State Level Scrutiny Committee at State level for verification of recommendation received from the District Scrutiny Committees with the following member, namely:-

(i) Director of the concerned Department of Education ---- Chairman;

(ii) Joint Director/Deputy Director of the concerned Directorate ---- Member-Secretary;

(iii) One representative nominated by the concerned Administrative Department ---- Member.

(11). The State Level Scrutiny Committee shall have to cause physical verification of all institution and will also inspect all documents and records produced before it and call for such other records and documents as may be required for the purpose of causing verification.

(12). When there arises difference in between the recommendation of the District Scrutiny Committee and the Physical verification report caused by the State Level Scrutiny Committee, the matter shall be placed before the State Level Scrutiny Committee and the decision of the State Level Scrutiny Committee(SLSC) shall be final.”

8. In terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the cases of eligible employees are required to be considered first by the District Level Scrutiny Committee(DLSC) which Committee shall upon scrutinization, shall prepare a list of all venture schools within the District eligible in terms of the provisions of the said Act of 2017 and thereafter, proceed to scrutinize and

verify the service records of all serving teachers who are eligible or would become eligible for consideration for provincialization of their services. The District Level Scrutiny Committee(DLSC) would also identify a Base School for each category of school and recommend the name of the teacher/tutor to be associated against each Base school. Thereafter, the District Level Scrutiny Committee(DLSC) shall forward the verified list of eligible teachers Base-school wise in accordance with the Act of 2017, to the concerned Director who shall place the matter before the State Level Scrutiny Committee(SLSC) to be constituted under Section 3(10) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The State Level Scrutiny Committee(SLSC) after proper scrutiny, as may be required, shall forward the same to for the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and teachers eligible for getting their services provincialized.

It may be mentioned here that in terms of Section 13(11), the State Level Scrutiny Committee(SLSC) is also mandated to cause physical verification of all institutions along with the inspection of documents and records produced before it and is also empowered to call for such further records as may be required for causing such a verification.

9. Having noticed the manner in which the eligible teachers are working in the venture schools for provincialization of their services; the procedure adopted for provincialization of the services of the petitioners herein, is hereby

examined.

The cases of the petitioners were duly recommended by the jurisdictional District Level Scrutiny Committee (DLSC) and the same were forwarded to the Director, Elementary Education Department, for further processing. It is the contention of the petitioners that their cases were placed before the State Level Scrutiny Committee(SLSC) and the State Level Scrutiny Committee(SLSC) had favourably recommended in their favour.

However, it is noticed that the cases of the petitioners were then placed before the Joint Committee constituted vide Government Notification, dated 18.03.2019. The said Joint Committee held on 24.07.2020 directed the Mission Director, Samagra Shiksha, to verify the following related parameters:

- “a) Whether the name of School appear in DISE data(maintained by NUEPA New Delhi) of 2009 or before.*
- b) Whether the name of incumbent appear in the DISE data of 2011 and afterwards.*
- c) Enrolment position of the school during 2016-17 and 2017-18.”*

10. The concept of a Joint Committee is not provided for in the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the said Act mandates only a two-tier consideration i.e. by the District Level Scrutiny Committee(DLSC) and thereafter, by the State Level Scrutiny Committee(SLSC). The said Joint Committee not being an authority prescribed under the Assam Education

(Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the conclusions arrived at by the Joint Committee are clearly conclusions without jurisdiction and the same cannot undermine the rights of the petitioners for provincialization which rights are to be considered and concluded by the District Level Scrutiny Committee(DLSC) and the State Level Scrutiny Committee(SLSC) only. Even if it is held that the Joint Committee has the jurisdiction to examine the proposals and provincialization of the services of the teachers under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the data that has been called for i.e. DISE Data from 2011 and afterwards and the enrollment position of the school during 2016-17 and 2017-18 is clearly contrary to the requirements in this connection as made in the said Act of 2017. The provisions of Section 3(xii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, requires that the enrollment in a particular school shall be verified with the data as per the DISE Code 2009-10 or before. There is no requirement under the said Act to have a verification of the DISE Code after 2009-10.

Further, the DISE Code indicating the presence of the employee in the institution concerned is to be also verified from the DISE Data maintained with regard to the school in question, up to the year 2009-10 and prior to that.

11. In that view of the matter; the prescriptions made by the Joint Committee in its meeting held on 24.07.2020 is clearly contrary to the requirements made

in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the same is of no substance. The rights of the petitioners could not have been determined basing on such conclusions reached by a body not contemplated under the said Act and also basing on parameters foreign to the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

12. At this juncture, it would be relevant to note the submissions of Mr. Mazumdar, learned standing counsel, that the authorities have to verify as to whether the teachers whose cases for provincialization have been considered, were in fact working in the school in question, on the dates of such consideration and the school had requisite number of students enrolled and for the said reason, the Government had constituted the Joint Committee to verify such facts.

The said submission of Mr. Mazumdar, learned standing counsel, cannot be accepted in-as-much as the Joint Committee is not a body prescribed under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and any action taken by such body foreign to the said Act, would be clearly without jurisdiction.

The apprehension raised by Mr. Mazumdar, learned standing counsel, is

already taken care of in the provisions of Section 3(xii) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, wherein, while providing that the enrollment shall be verified with the data as per the DISE Code 2009-10 or before; provides that there will be physical verification of students and checking of records of attendance of students of last three years. This when read conjointly with Section 13(11) which mandates that the State Level Scrutiny Committee shall have to cause physical verification of all institutions and inspect all documents and records produced before it and call for such other records and documents as may be required for the purpose of causing verification; demonstrates that it is the State Level Scrutiny Committee(SLSC) that is to undertake the physical scrutiny to ascertain as to whether the school continued to have prescribed enrollment of students and as to whether the teachers considered for provincialization, were continuing in their services in the school. The State Level Scrutiny Committee(SLSC) cannot in the absence of any power given to it; delegate its power of physical verification and inspection of documents to any other authority including the said Joint Committee.

13. In view of the said conclusion reached; I am of the considered view that the cases of the petitioners were not considered in the manner required under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and also the same was not considered within the parameters as mandated in the said Act. Accordingly, the decisions arrived at by the authorities to reject the cases of the petitioners on

the ground that their names were not captured in the DISE Data up to 2011-12, is interfered with. All decisions of the State Level Scrutiny Committee(SLSC) and the Joint Committee and other authorities, if any, also stands interfered with.

14. The Director, Elementary Education Department, would now place the proposal of the District Level Scrutiny Committee(DLSC), Karimganj, before the State Level Scrutiny Committee(SLSC) as mandated in terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the State Level Scrutiny Committee(SLSC) shall re-examine the proposal of the petitioners strictly within the parameters set-out, in the said Act of 2017 and while doing so, will exercise the powers vested in it under Section 13(11) of the said Act of 2017.

The Director, Elementary Education Department, Government of Assam, shall place the proposal received from the District Level Scrutiny Committee(DLSC), Karimganj, in respect of the petitioners before the State Level Scrutiny Committee(SLSC) within a period of 15(fifteen) days from the date of receipt of a certified copy of this order. The State Level Scrutiny Committee(SLSC) thereafter shall expeditiously consider the same and after examination of the proposal within the parameters prescribed under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and by causing physical verification mandated under Section 13(11) of the said Act, make its recommendations in the matter. The recommendations as made by the State Level Scrutiny

Committee(SLSC) shall be communicated by the Director, Elementary Education Department, Government of Assam, to the petitioners.

In the event, the recommendations made by the State Level Scrutiny Committee(SLSC) is favourable to the petitioners, further processing in the matter for having the services of the petitioners provincialized, shall be processed and completed by the Director, Elementary Education Department, Government of Assam, by receiving approvals from the State Government as mandated.

15. With the above directions, the writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant