

GAHC010022192021



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

Case No. : WP(C)/941/2021

MAFIDUR RAHMAN
S/O ALI CHAUDHURY, R/O VILL. MAJID, CHAKUWAMARI, GARAIMARI,
AMBAGAN, DIST. NAGAON, ASSAM, PIN 782120

VERSUS

THE STATE OF ASSAM AND 8 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT.
OF ASSAM, DEPTT. OF ELEMENTARY EDUCATION, KAHILIPARA,
GUWAHATI 781019, ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI 781019
ASSAM.

3:THE DIST. ELEMENTARY EDUCATION OFFICER

NAGAON
ASSAM.

4:THE DEPUTY COMMISSIONER

NAGAON
ASSAM.

5:THE DIST. SCRUTINY COMMITTEE

NAGAON
ASSAM.

6:THE BLOCK ELEMENTARY EDUCATION OFFICE

KALIABOR
NAGAON
ASSAM.

7:THE HEAD MASTER

PUB BHAKUAMARI L.P. SCHOOL UNDER KALIABOR EDUCATION BLOCK
KALIABOR
NAGAON
ASSAM.

8:THE PRESIDENT OF MANAGING COMMITTEE OF THE SCHOOL

PUB BHAKUAMARI L.P. SCHOOL UNDER KALIABOR EDUCATION BLOCK
KALIABOR
NAGAON
ASSAM.

9:JYOTSNARA BEGUM

W/O LOTIFUR RAHMAN
R/O VILL. BHAKUWAMARI
P.O. AMBAGAN
P.S. ULUWANI
DIST. NAGAON
ASSAM
PIN 78212

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-02-2023

Heard Ms. G. Borah, learned counsel for the petitioner and Mr. R. Mazumdar, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 3 & 6. Also heard Mr.

G. Pegu, learned Government Advocate, Assam for the respondent Nos. 4 & 5.

The claim of the petitioner is that the authorities of Pub Bhakuamari Lower Primary School in the Kaliabor Education Block, District-Nagaon during its venture stage appointed him as an Assistant Teacher of said school on 02.10.2010, pursuant to which, he joined the said school accordingly.

The respondent No. 9 was the first Assistant Teacher of said school who was appointed on 12.06.2006. As she used to remain absent, the School Managing Committee (SMC) of said school by resolution dated 02.08.2019 upgraded the petitioner as 1st Assistant Teacher of said School.

By communication No. EPS/Provin/LP-UP/23/2020/3305 dated 29.09.2020, the District Elementary Education Officer, Nagaon informed the Director of Elementary Education, Assam that the SMC of said Pub Bhakuamari L.P. School under Kaliabar Education Block discharged the respondent No. 9 Assistant Teacher of said school as she was found working as an Anganwadi worker at Dakhin Bhakuamari Mini Anganwadi Centre under Social Welfare Department, Kaliabor and that the SMC of said school took a resolution to upgrade the petitioner from 2nd Assistant Teacher to 1st Assistant Teacher in place of the respondent No. 9 and further informed that in that regard, the Block Elementary Education Officer, Kaliabor forwarded the concerned resolution of the SMC of said School.

As the respondent authorities in Elementary Education Department provincialised the service of the respondent No. 9 disregarding the claim of the petitioner, he has preferred this writ petition praying for a direction to the respondent authorities not to provincialise the service of the respondent No. 9 under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 and to pass necessary order for provincialisation of his service.

Notice in this case was issued on 17.02.2021. But the respondent authorities in the School Education Department have not filed their affidavits in the matter till date.

Matter pertains to seniority dispute between the petitioner and the respondent No. 9 regarding the claim of provincialisation of their services under the provisions of said 2017 Act as amended in 2018.

Section 19 of said 2017 Act relates to "Suit and Proceedings", which reads as follows:-

“(1) No suit, prosecution or other legal proceeding shall lie for anything in good faith done

under this Act, except with the previous sanction of the State Government.

(2) To adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal."

Considering the above and as the dispute between the petitioner and the respondent No. 9 is regarding provincialisation of their services in terms of the provisions of said 2017 Act, the petitioner may approach the appropriate Educational Tribunal for redressal of his grievances.

In the event of filing any such application by the petitioner before the concerned Educational Tribunal, the said authority shall pass a reasoned order considering the relevant documents and giving an opportunity of hearing to the petitioner as well as the respondent No. 9 regarding the claim of the petitioner for his provincialisation of service.

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

JUDGE

Comparing Assistant