

GAHC010026172023



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

Case No. : WP(C)/752/2023

NOZIR UDDIN MAZUMDER @ NOZIR AHMED MAZUMDER
S/O- LATE MONIR UDDIN MAZUMDER,
VILL. UTTAR JASNABAD PART-I,
PO.- LALA MUKH, P.S.- LALA,
DIST.- HAILAKANDI, ASSAM,
PIN- 788161.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION DEPARTMENT (ELEMENTARY),
DISPUR, GUWAHATI-6.

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

3:THE DISTRICT ELEMENTARY EDUCATION
HAILAKANDI
DIST.- HAILAKANDI
ASSAM

PIN- 788151.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
LALA
DIST.- HAILAKANDI
ASSAM

PIN- 788151.

5:THE DEPUTY COMMISSIONER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM

PIN- 788151.

6:THE DISTRICT SCRUTINY COMMITTEE FOR PROVINCIALISATION OF
VENTURE EDUCATIONAL INSTITUTIONS
REPRESENTED BY ITS MEMBER SECRETARY CUM THE DISTRICT
ELEMENTARY EDUCATION OFFICER

HAILAKANDI
DIST.- HAILAKANDI

ASSAM
PIN- 788151

Advocate for the Petitioner : MR. S B LASKAR
Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

13-02-2023

Heard Mr. S.B. Laskar, learned counsel for the petitioner and Ms. N. Phukan, learned Standing counsel, Department of School (Elementary), Education, Assam for the respondent Nos. 1 to 4 & 6. Also heard Mr. G. Pegu, learned Government Advocate, Assam for the respondent No. 5.

The petitioner contended that he is a Graduate in Arts who obtained his degree from Assam University, Silchar in the year 1998 and also obtained Diploma in Elementary Education from the National Institute of Open Schooling in March, 2019.

Having the requisite qualification, the School Managing Committee of Anwarpar M.E. Institute, Rajyeswarpur Pt.VII, Katagaon, District-Hailakandi on 01.01.2004 appointed the petitioner as the Headmaster of said school, during its venture stage. Accordingly, he joined the said school on the same day.

It is stated by the petitioner that the District Scrutiny Committee (Elementary Section), District-Hailakandi in its meeting held on 31.12.2018 recommended his name for provincialisation of service but the respondent authorities are yet to provincialise his service under the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

Hence, this writ petition preferred by the petitioner.

The petitioner stated that the services of other teachers of said Anwarpar M.E. Institute, District-Hailakandi recommended by the District Scrutiny Committee (DSC, in short) (Elementary Section), District-Hailakandi have already been provincialised as "tutors" to which the Director of Elementary Education, Assam issued an order No. EPD-16/Provn-UP(Act, 2017)/2021/3326 dated 05.02.2021.

The petitioner has annexed a copy of the minutes of the meeting of the DSC (Elementary Section), District-Hailakandi held on 31.12.2018 to this petition as Annexure-4.

From perusal of the said minutes dated 31.12.2018, noted above, it is seen that the concerned DSC (Elementary Section), District-Hailakandi has earlier recommended three Nos. of teachers of such venture upper primary schools and in addition to the earlier recommendation, by the said minutes dated 31.12.2018, the DSC, Hailakandi recommended the name of the petitioner for provincialisation of his service considering that *"the necessity of the establishment of educational institution in the backward/remote/garden/forest area etc. so as to establishment of institution for the development of education, alleviation of unemployment of the unemployed educated youth subject to the fulfillment of other criteria by the authorities in due course of time."*

Section 3 (1)(xi) of said 2017 Act reads as follows:-

"In case of Venture Upper Primary School, there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009).

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 a statutory appeal before the Secretary to the Government of Assam in the Department of School (Elementary) Education as provided under Section 14 of said 2017 Act as amended **on or before 15.03.2023** along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary to the Government of Assam in the Department of School (Elementary) Education on verification of the relevant records, shall dispose of the said statutory appeal of the petitioner with a reasoned order within a period of 30 (thirty) days after giving an opportunity of hearing to the petitioner intimating him about the outcome of said appeal.

However, in the meanwhile, the petitioner is found to be eligible for provincialisation following the provisions of said 2017 Act, the respondent authorities in the Elementary Education Department shall provincialise his service from the date of provincialisation of the other teachers of said Anwarpar M.E. Institute, Rajyeswarpur Pt.VII, Katagaon District-Hailakandi, giving him all such financial and other service benefits as applicable under the law.

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

JUDGE

Comparing Assistant