

GAHC010034452021



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

Case No. : WP(C)/1309/2021

PIRITI BASUMATARY
D/O- SHRI CHANDRA KANTA BASUMATARY
W/O- NILSON BASUMATARY
R/O- VILL- HATIMATHA
W/.NO. 8
P.O. AND P.S. KOKRAJHAR
DIST.- KOKRAJHAR
B.T.C. (ASSAM)
PIN- 783370

VERSUS

THE STATE OF ASSAM AND 10 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY-6

2:THE PRINCIPAL SECRETARY
HIGHER EDUCATION DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
CUM THE CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
HIGHER EDUCATION
KAHILIPARA
GHY-19

4:THE SECRETARY
EDUCATION DEPTT.

B.T.C. KOKRAJHAR
5:THE DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
6:THE INSPECTOR OF SCHOOL
K.D.C.
KOKRAJHAR
7:THE PRINCIPAL
SCIENCE COLLEGE
KOKRAJHAR
P.O. AND P.S. KOKRAJHAR
DIST.- KOKRAJHAR
BTC (ASSAM)
8:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
9:THE JOIN SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (S)
DEPTT.
10:SECRETARY
ASSAM HIGHER SECONDARY EDUCATION COUNCIL
BAMUNIMAIDAM
GHY-21
11:THE DY. SECRETARY (INSPECTION)
ASSAM HIGHER SECONDARY EDUCATION COUNCIL
BAMUNIMAIDAM
GHY-21

Advocate for : MR. A DAS
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 10 ORS

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

24.01.2023

Heard Mr. A Das, learned counsel for the petitioner and Mr. S Das, learned Standing counsel, Higher Education Department for the respondent Nos. 1, 2 & 3. Also heard Mr. S R Rabha, learned Standing counsel, BTC for the respondent Nos. 4, 5 & 6; Mr. SMT Chistie, learned Standing counsel, Department of School (Higher) Education, Assam for the respondent Nos. 8 & 9 as well as Mr. D Roy, learned Standing counsel,

Assam Higher Secondary Education Council (AHSEC) for the respondent Nos. 10 & 11.

The petitioner's contention herein is that as she possess all the requisite eligibility, the Governing Body of Science College, Kokrajhar in the mid August 2009 appointed her as an Assistant Professor in the subject of Bodo in that college while it was in venture stage and since then she is continuously serving in that college.

The Science College, Kokrajhar was initially a Junior Science College (having Class XI & XII). The Assam Higher Secondary Education Council on 13.03.2000 granted permission to the said Junior Science College, Kokrajhar to introduce Higher Secondary 1st Year class in the Science stream w.e.f. 1999-2000 with the subject of English, Modern Indian Language (MIL) [Assamese, Bangali and Bodo], Physics, Chemistry, Mathematics and Biology.

Pursuant to the said decision of the Council in its meeting held on 28.03.2001, the Secretary to the Assam Higher Secondary Education Council in the year 2000 granted permission for the 2nd year Higher Secondary Classes of said Science College, Kokrajhar for the Science stream in the subjects of English, Modern Indian Language (MIL) [Assamese, Bangali and Bodo], Physics, Chemistry, Mathematics and Biology.

Later, the said Junior Science College, Kokrajhar was upgraded to a Degree College in Science stream under the Gauhati University in the year 1999-2000.

Said Science College, Kokrajhar was provincialised in the year 2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012, during its force.

As her service as an Assistant Professor of Bodo of said college was not provincialised under the provisions of said 2011 Act as amended in 2012 in said Science College, Kokrajhar, the petitioner on 23.05.2018 and 20.12.2018 submitted representations before the Principal Secretary, Higher Education, Assam; the Director of Higher Education, Assam-cum-Chairman of the State Level Selection Committee for Higher Education praying for provincialisation of her service.

Though the authorities of said Science College, Kokrajhar submitted the relevant

documents and detail particulars before the District Scrutiny Committee (DSC) for Higher Education, Kokrajhar for consideration of provincialisation of the service of the petitioner and the said DSC, Kokrajhar recommended the name of the petitioner for provincialisation of her service in said Science College under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institution) Act, 2017 Act, but her name did not figure in the list of provincialisation of service, issued by the Commissioner & Secretary, Higher Education, Assam. As such the Chief of the BTC vide communication dated 05.10.2018 requested the Principal Secretary, Higher Education, Assam for consideration of the case of the petitioner for provincialisation of her service.

Petitioner stated that pursuant to the Notice dated 21.08.2020 issued by the Director of Higher Education (DHE), Assam, she on 27.08.2020 submitted an appeal before the DHE, Assam through an e-mail in the prescribed format, as required, stating her grievances, but nothing progressed. As such, she filed a writ petition being WP(C) No. 3693/2020.

The respondent DHE, Assam filed an affidavit in said writ petition of the petitioner. After hearing the parties, the Court by order dated 29.09.2020 disposed of said WP(C) No. 3693/2020 preferred by the petitioner, at motion stage, directing the Director of Higher Education, Assam to dispose of her said appeal dated 27.08.2020 in accordance with law within a period of 90 days, further directing the petitioner to submit certified copy of the said order and a copy of her appeal dated 27.08.2020.

Pursuant to the said direction of the Court dated 29.09.2020 passed in WP(C) No. 3693/2020, the Director of Higher Education, Assam vide No. PC/HE/Prov/8/2019/135 dated 21.12.2020 issued a Speaking Order rejecting the prayer of the petitioner for provincialisation of her service as an Assistant Professor in the Department of MIL (Boro) in Science College, Kokrajhar under the provisions of said 2017 Act, stating that in consideration of her appeal dated 26.08.2020 and after re-examination of her claim it was found that in said Science College, Kokrajhar the subject of MIL-Boro is without the required concurrence of the State Government in the Higher Education Department.

It is seen that the petitioner in this petition herself stated that the Governing Body of said Science College, Kokrajhar in its meeting held on 28.08.2017 resolved to open subject of Boro (MIL) in its Degree level under Bodoland University from the Session 2017-2018 only and decided to approach the Director of Education, BTC in that regard.

The Director of Higher Education, Assam in its affidavit filed in this matter clarified that though the petitioner was appointed as an Assistant Professor in Bodo (MIL) by the authorities of the Science College, Kokrajhar during its venture stage, but the said college received concurrence/permission to start class in MIL (Bodo) along with some other subjects from the State Government in the Higher Education Department only on 09.03.2000, but the said college did not obtain the requisite concurrence for the subject of Bodo for the degree classes earlier, which was obtained by the said college on 09.03.2000 only and for such reason the service of the petitioner cannot be provincialised under the provisions of the said 2017 Act, due to devoid of subject concurrence from the State Government in the Higher Education Department in the appropriate time.

During the deliberation of the matter, Mr. Das, learned Standing counsel, Higher Education Department placed the relevant programs and courses provided by the Science College, Kokrajhar that includes Higher Secondary Course (10+2) in Science stream, wherein English and MIL (any one amongst the Assamese, Bodo and Alternative English) have been shown to be compulsory subjects with regard to the Bachelor of Science in semester system in said Science College, Kokrajhar. As per its Brochure it is only the English, as a language which is compulsory during 1st and 2nd Semester and the other elective subjects are (i) Physics, Mathematics, Chemistry (ii) Mathematics, Physics, Computer Science and (iii) Chemistry, Botany, Zoology, and that major courses are available in the subjects of Physics, Chemistry, Mathematics, Botany, Zoology and Computer Science. In the said Science College in its degree level course, subject Bodo is not considered as MIL.

After declaring the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 amended in 2012 as ultra vires by the Division Bench of this Court

vide Judgment and Order dated 23.09.2016 passed in the case of *Shri Chandan Kumar Neog & Ors. –Vs– the State of Assam and Ors.* (WP(C) No. 3190/2012), the State Government in the Education Department brought into force the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institution) Act, 2017 Act, amended in 2018, which is presently in force. As per the provisions of said 2017 Act pertaining to consideration for provincialisation of services of Teachers and/or Tutors of such Degree Colleges, they must receive permission / concurrence for TDC Part-I from the Government on or before 01.01.2006.

“Employee” as provided under Section 2(j) of the said Act provides that-

“Employee means and includes all serving teachers and tutors as the case may be, of Venture Educational Institutions who have been appointed and joined in the concerned Venture Educational Institution before the 1st day of January, 2011 and whose services are being or would be provincialised under this Act.”

Section 2(t) of the said 2017 Act stipulates ‘Teacher’ which means -

“Teacher means Teachers, Assistant Teachers, Classical Teachers and also includes Lecturers, Assistant Professors, Associate Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent and any person of the teaching faculty working in the Venture Educational Institution having required educational and professional qualification as per norms and standards fixed by the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009), National Council for Teachers Education Act, 1993 (Central Act No. 73 of 1993), University Grants Commission Act, 1956 (Central Act No. 3 of 1956) and the relevant rules and regulations framed thereunder and any other Act as the case may be, as applicable on the day of provincialisation and whose services are provincialised under this Act in the post of teacher or in any other post in the teaching faculty but, not as tutor under this Act.”

Section 2(u) of the said 2017 Act defines ‘Tutor’ which reads as -

“tutor means and includes Teachers, Assistant Teachers, Classical Teachers and also includes Lecturers, Assistant Professors, Associate Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent in a provincialised educational institution under this Act who are not eligible for provincialisation of their services and whose services can not be provincialised in the post of Teacher under this Act due to lack of his/her educational and professional qualifications required as per the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009), National Council for Teachers Education Act, 1993 (Central Act No. 73 of 1993), University Grants Commission Act, 1956 (Central Act No. 3 of 1956) and the relevant rules and regulations framed thereunder and any other Act, as the case may be, as applicable on the date of provincialisation, however, his/her service is provincialised as tutor with separate terms and conditions of service, to be notified by the competent Administrative Department:

Provided that a tutor shall not be eligible to hold the post of Professors, Principal, Vice-Principal, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent, as the case may be, in an educational institution provincialised under this Act;”

Section 2(w) of the said 2017 Act relates to Venture Degree College which stipulates-

“Venture Degree College means a Degree College imparting education beyond Higher Secondary stage established by the people of the locality prior to 01.01.2006 and which has also received affiliation from the concerned University, concurrence from the State Government on or before 01.01.2006 atleast for TDC Part-I and whereof the services of teachers have not been provincialised under any Act enacted by the State legislature so far;”

Section 3 of the said 2017 Act relates to eligibility criteria for selection of educational institution for provincialisation of services of teachers/tutors and sub-Section (1)(i) of Section 3 of said 2017 Act provides as follows -

“The Venture Educational Institutions which have been established and had obtained the required permission, recognition, affiliation, concurrence, as the case may be, required for the concerned institution from the respective competent Authority or Authorities on or before 01.01.2006:

Provided that the permission for 1st year HS classes in respect of Higher Secondary School, concurrence for 1st year HS classes in respect of Senior Secondary School (erstwhile Junior College), recognition from Board of Secondary Education, Assam for Class-IX in respect of High School, concurrence for TDC Part-I in respect of Degree College received from the Government on or before 01.01.2006 shall be treated as the permission, concurrence or recognition as the case may be, for the purpose of provincialisation of services of teachers and/ or tutors under this Act:

Provided further that the order for such permission, recognition and concurrence shall have to be issued on or before 01.01.2006 and any order issued thereafter with any retrospective effect, shall not be considered for the purpose of provincialisation of services of any teacher and tutor, as the case may be, of the institution.”

Section 3(2) of the said 2017 Act stipulates as follows -

“In case of a Venture Degree College and a Venture Higher Secondary School or a Venture Junior College the eligibility criteria specified in sub-section (1) above regarding date of recognition, affiliation or concurrence, minimum enrolment and performance would mean in respect of each of the subjects with or without ‘Major’ as the case may be, and the services of the teachers appointed or engaged in connection with such subject or subjects shall be considered for provincialisation under the provisions of this Act, only if the specified eligibility criteria as per University Grants Commission Act, 1956 (Central Act No. 3 of 1956), National Council for Teachers Education Act, 1993 (Central Act No. 73 of 1993) and relevant rules and regulations framed thereunder, as the case may be, as applicable on the date of provincialisation,

are satisfied and having sufficient enrolment in the concerned School or Colleges including in the concerned subject.”

Section 6 of the said 2017 provides the educational and professional qualification of teachers to be provincialised, which reads as follows-

“The services of teachers in a Venture Educational Institution from the Primary Level up to the Degree Level, shall be considered for provincialisation in the post of teachers or relevant teaching faculty in appropriate nomenclature, as the case may be, subject to fulfillment of the eligibility criteria relating to educational and professional qualifications as laid down under the following Acts,

Rules and Regulations:-

- a) The Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) and its Rules;
- b) The National Council for Teachers Education Act, 1993 (Central Act No. 73 of 1993) and its Regulations in force at the time of provincialisation of services;
- c) The Assam Secondary Education (Provincialised) Service Rules, 2003, as amended in 2012;
- d) The University Grants Commission Act, 1956 (Central Act No. 3 of 1956) and University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010, framed thereunder, as the case may be. ”

For the post of Assistant Professor, the University Grants Commission by its various Regulations with regard to Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, amongst others, specified that the candidate must have at least 55% marks in the Master Degree Level in the relevant

subject from an Indian University and provided relaxation of 5% at the graduate and master's level for the Scheduled Caste/ Scheduled Tribe/Differently-abled (Physically and visually differently-abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to the teaching positions. The UGC in case of recruitments to the teaching positions never relaxed beyond 5% of said 55% marks in the Master Degree Level for any other categories.

The requirement for provincialisation of service as provided under Section 3 of said 2017 Act, as noted above, is that the concerned Venture Degree College should obtain the required permission/recognition/affiliation/ concurrence in respect of each of the subjects with or without 'Major' as the case may be from the concerned competent authority/authorities on or before 01.01.2006, whereas the petitioner herself stated that the subject of Bodo as MIL in the Degree Level of Science College, Kokrajhar was approved by the Bodoland University from the Session 2017-2018 only. Moreover, petitioner failed to place anything before the Court as to when the Science College, Kokrajhar obtained the required permission/recognition/affiliation/ concurrence in respect of the subject Boro from the concerned authority in the Government to teach the said subject in that college.

Furthermore, the petitioner though belongs to reserve category of Scheduled Tribe (Plains), but she did not state the marks that she secured in her Master Degree Examination in the subject of Boro to establish that she possesses the requisite percentage of marks for her appointment as a lecturer of Boro (MIL) in a Degree College as specified by the University Grants Commission nor she stated the minimum enrolment of students in the subject Bodo at Degree level in said Science College, Kokrajhar and their performance for the last three years required for provincialisation as provided in the said 2017 Act.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court found that the petitioner failed to establish her case for provincialisation of her service as an Assistant Professor in Science College, Kokrajhar under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institution) Act, 2017 Act, as amended in

2018.

Further the prayer of the petitioner for provincialisation of her service under the provisions of the of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012 does not arise as a Division Bench of this Court by Judgment and Order dated 23.09.2016 passed in the case of *Shri Chandan Kumar Neog & Others –Vs– The State of Assam and Others* (WP(C) No. 3190/2012) and other connected cases have declared the said 2011 Act as ultra vires and since then said 2011 Act is no longer in force.

For the reasons above the Court is of the view that the petitioner does not fulfill the requisite criteria for provincialisation of her service under the provisions of said 2017 Act, as amended in 2018, noted above. As such the impugned Speaking Order No. PC/HE/Prov/8/2019/135 dated 21.12.2020 passed by the Director of Higher Education, Assam rejecting the prayer of the petitioner for provincialisation of her service under the provisions of said 2017 Act, as amended in 2018, passed in pursuance of the direction of the Court dated 29.09.2020 passed in WP(C) No. 3693/2020, does not call for any interference.

Accordingly, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant