

GAHC010034452021



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

Case No. : WP(C)/1493/2021

OLEE BARMAN
D/O LATE RAMESH CHANDRA BARMAN, W/O TRIDIP BARUA, R/O
KOKRAJHAR, R.N.B. ROAD, P.O. AND P.S. KOKRAJHAR, DIST. KOKRAJHAR,
B.T.C. (ASSAM), PIN 783370

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, HIGHER EDUCATION DEPTT., DISPUR GUWAHATI 6

2:THE PRINCIPAL SECY. HIGHER EDUCATION DEPTT.

GOVT. OF ASSAM
DISPUR
GUWAHATI 6

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM CUM THE CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
HIGHER EDUCATION
KAHILIPARA
GUWAHATI 19

4:THE SECY. 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
GUWAHATI 19

9:THE JOINT SECY. TO THE GOVT. OF ASSAM

EDUCATION DEPTT.

10:SECY. ASSAM HIGHER SECONDARY EDUCATION COUNCIL
BAMUNIMAIDAM
GUWAHATI 21

11:THE DEPUTY SECY. (INSPECTION)
ASSAM
HIGHER SECONDARY EDUCATION
COUNCIL
BAMUNIMAIDAM
GUWAHATI 2

Advocate for the Petitioner : MR. A DAS

Advocate for the Respondent : SC, HIGHER EDU

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 (Secondary) 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 since 1996 she is serving as an Assistant Professor in the subject of Assamese in Kokrajhar Science College, Kokrajhar.

Earlier petitioner preferred a writ petition being WP(C) No. 3772/2020, praying amongst others, for consideration of her case for provincialisation (i) under Sections 3 & 4 of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, (ii) under Sub-section 2 of Section 4 of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and (iii) under Sub-section 4 of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institution) Act, 2017 as per the Scrutiny Report dated 23.10.2017 of the District Scrutiny Committee (DSC) for Higher Education, Kokrajhar where the post of Modern Indian Language, MIL (Assamese), the post in which the petitioner has alleged to be serving, was scrutinized by the said DSC and recommended for provincialisation under the said 2017 Act and that the said DSC forwarded the relevant scrutiny report to the Government of Assam.

The said WP(C) No. 3772/2020 was disposed of on 30.09.2020.

During the deliberation of said WP(C) No. 3772/2020, the petitioner brought to the notice of the Court that she preferred an appeal/ representation in the prescribed format before the Director of Higher Education, Assam and that the same was still pending for consideration, wherein she prayed for provincialisation of her service under the provisions of the said 2017 Act.

Considering the said submission of the petitioner and after hearing the learned counsels for the parties the Court by order dated 30.09.2020 disposed of said WP(C) No. 3772/2020, directing the Director of Higher Education Assam to dispose of the said appeal of the petitioner in accordance with law within a period of 90 days from the

date of receipt of the certified copy of the said order intimating the petitioner about the outcome of the said appeal/ representation.

Pursuant to the same, the Director of Higher Education, Assam vide Speaking Order No. PC/HE/Prov/8/2019/136 dated 21.12.2020 disposed of the said appeal of the petitioner stating that the Kokrajhar Science College, Kokrajhar have not obtained the required concurrence for the subject of Assamese from the Government in the Higher Education Department and where on re-examination of the appeal of the petitioner dated 26.08.2020, the concerned State Level Scrutiny Committee found that the petitioner's service as an Assistant Professor in the Department of Assamese at Kokrajhar Science College, Kokrajhar can not be considered for provincialisation in the absence of due subject concurrence from the Government in the Higher Education Department.

Said Speaking Order dated 21.12.2020 passed by the Director of Higher Education, Assam was communicated to the petitioner, which is annexed to this petition as Annexure-21.

The petitioner obtained her Graduation (three years degree) in the year 1989 in 2nd Class with major in the subject of Assamese. She has also passed Master Degree in 2nd Class in the subject of Assamese from the Gauhati University in the year 1993.

The Science College, Kokrajhar was initially a Junior Science College (having Class XI & XII) and the Governing Body of the said Jr. College in its meeting held on 28.12.1995 resolved to appoint the petitioner as a Lecturer of Assamese on honorary basis at Rs. 700/- P.M. in the said Junior College, while it was in venture stage and accordingly, the petitioner joined her service as a Teacher of Assamese in the said Kokrajhar Junior Science College, Kokrajhar.

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 Kokrajhar 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.

However, the service of the petitioner as an Assistant Professor of Assamese of the said college could not be provincialised under the provisions of said 2017 Act pertaining to said Science College, Kokrajhar since with regard to the subject of Assamese, the college obtained concurrence only for the Higher Secondary Level.

The authorities of said Science College, Kokrajhar submitted the relevant documents before the District Scrutiny Committee (DSC) for Higher Education, Kokrajhar for consideration of provincialisation of the service of the petitioner. The said DSC, Kokrajhar recommended the name of the petitioner for provincialisation of her service as a Tutor with regard to said Science College.

The petitioner has placed before the Court that after separation of the Kokrajhar part of the Gauhati University from the Gauhati University, the same is renamed as Bodoland University, Kokrajhar and it gave consent for opening of the subject of Assamese as a Modern Indian Language (MIL) in the Degree Level of Science College, Kokrajhar for the session 2017-2018 (Annexure-23 to this petition).

The Director of Higher Education, Assam has filed an affidavit in this matter clarifying that though the petitioner was appointed as an Assistant Professor in Assamese (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 (Assamese) 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 Assamese for the degree class earlier and it was obtained on 09.03.2000 by the said college and for which the service of the petitioner could not 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 Assamese is not considered as MIL.

Though the petitioner claimed for provincialisation of her service under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012 as the other teaching staff of the said Science College, Kokrajhar were provincialised under the said Act during its force, it is to be noted herein that a Division Bench of this Court by 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) declared the said 2011 Act as ultra vires.

After the said decision of the Hon'ble Division Bench of this Court, the State Government in the Education Department brought into force the said 2017 Act, which is presently in force, pertaining to consideration of the Degree Colleges, Senior Secondary Schools, erstwhile Junior Colleges, Higher Secondary Schools and High

Schools which received permission for 1st year higher secondary classes in respect of Higher Secondary Schools, concurrence for 1st year higher secondary classes in respect of Senior Secondary Schools erstwhile Junior Colleges and concurrence for TDC Part-I in respect of Degree Colleges received from the Government and recognition from the Board of Secondary Education, Assam for Class-IX in respect of High School on or before 01.01.2006 for provincialisation of services of Teachers and/or Tutors of such institutions.

“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 reads as follows-

“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 stipulates as follows-

“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 reads as follows-

“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 Section 1 (i) of said Section 3 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. ”

The petitioner herself stated that the subject of Assamese as MIL in the Degree Level of Kokrajhar Science College, Kokrajhar was approved by the Bodoland University from the Session 2017-2018, whereas the requirement for provincialisation of service under the said 2017 Act under Section 3 (1) (i) is that the concerned institution should obtain the required permission/ recognition/affiliation/concurrence from the respective competent authority/authorities on or before 01.01.2006.

Further, Section 3 (2) of the said 2017 Act provides that the performance of students for consideration for provincialisation with regard to a Venture Degree College regarding date of recognition/affiliation/concurrence including minimum enrollment would mean in respect of each of the subjects with or without 'Major', as the case may be, and that the services of the teachers appointed or engaged in connection with such subject or subjects shall be considered for provincialisation under the provisions of the said 2017 Act.

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. ”*

The University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 issued by the University Grants Commission vide No. F.3-1/2009 dated 30.06.2010 for the post of Assistant Professor amongst others, requires at least 55% marks in the Master Degree Level in the relevant subject from an Indian University, where at Clause 3.4.1 a relaxation of 5% is provided 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.

Mr. Das, learned counsel for the petitioner submitted that the petitioner belongs to the OBC Category.

However, the relevant UGC Regulations, 2010, noted above, does not provide for any such relaxation of 5% for any other categories, except defined at Clause 3.4.1, noted above.

The petitioner in her petition clearly stated that her marks at Master Degree

Level as 45.60%, though the requirement for consideration for the post of Assistant Professor is 55%, as considered above.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court is of the view that the petitioner has failed to establish her right for consideration of her case for provincialisation under the said 2017 Act, as it is found that the petitioner does not fulfill the requisite criteria for provincialisation of her service under the provisions of said 2017 Act, noted above.

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

JUDGE

Comparing Assistant