

GAHC010042032023



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

Case No. : WP(C)/1446/2023

JOHIRUL ISLAM AND 8 ORS
S/O SOMEJ UDDIN, VILL-BANIAMARI PT. VI, P.O.-MAKRIJHORA, P.S.-
GOURIPUR, DIST-DHUBRI, ASSAM, PIN-783349

2: FAYEZ UDDIN
S/O BOSER SK
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

3: NALU SK
S/O TALEB ALI
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

4: MAZNUBAR RAHMAN
S/O BASIR UDDIN AHMED
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

5: HATEM ALI
S/O MOZIBAR RAHMAN
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI

ASSAM PIN-783349

6: NOZRUL ISLAM
S/O SOMEJ UDDIN
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

7: SHAJAHAN ALI
S/O AKRAM ALI
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

8: SIDDIQUE AHMED
S/O BASIR UDDIN AHMED
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-783349

9: ABDUL MATIN
S/O BASIR UDDIN AHMED
VILL-BANIAMARI PT. VI
P.O.-MAKRIJHORA
P.S.-GOURIPUR
DIST-DHUBRI
ASSAM PIN-78334

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, SCHOOL EDUCATION DEPARTMENT, DISPUR, GHY-6

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

3: THE ADDITIONAL DEPUTY COMMISSIONER
-CUM- CHAIRMAN DISTRICT LEVEL COMMITTEE FOR SELECTION OF
BASE SCHOOL DHUBRI
ASSAM PIN-783301

4:THE INSPECTOR OF SCHOOLS
DHUBRI DISTRICT CIRCLE
-CUM- MEMBER SECRETARY
DISTRICT LEVEL COMMITTEE FOR SELECTION OF BASE SCHOOL
DHUBRI ASSAM
PIN-783301

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
-CUM-MEMBER
DISTRICT LEVEL COMMITTEE FOR SELECTION OF BASE SCHOOL
DHUBRI
ASSAM PIN-783301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA DHUBRI
ASSAM PIN-78330

Advocate for the Petitioner : MD H R AHMED
Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

17-03-2023

Heard Mr. Saidul Islam, learned counsel for the petitioners and Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4, 5 and 6. Also heard Mr. G. Bokolial, learned Government Advocate, Assam for the respondent No.3.

2) Petitioners are the Guardians of the students of Badlapara Lower Primary School, Baniamari Part-VI village in the Bilasipara Education Block of District-Dhubri having DISE Code No.18020433602 of the year 2019.

3) Said L.P. School was managed by two Teachers, namely, Abdul Baten and

Santesh Ali Sheikh.

4) While submitting the report under Section 3 (1) (xi) of *the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017* in the format for provincialisation of service of the teaching staff of said L.P. School, the District Scrutiny Committee (Elementary), Dhubri in proper format recommended the names for provincialisation of services of those two Teachers of said Badlapara L.P. School as Tutors specifying that the provincialised Base School is 1334 No. Piajbari J B School, which is situated at about 1.5 Kms away from said Badlapara L.P. School and that the pupil teacher ratio is 55:1 as it has 198 students from Class - I to Class - V.

5) After the recommendation of the District Scrutiny Committee being approved by the State Level Selection Committee and on approval of the State Government in the Elementary Education Department, the Director of Elementary Education, Assam vide Order No.EPD-15/Provn.-LP(Act.2017)2021/1023 dated 05.02.2021 while provincialising the service of said Abdul Baten as Tutor under the said 2017 Act, he was placed in the Base School, namely, 2409/No.B Jhorarpar L.P. School.

6) Petitioner submitted that said 2409/No.B Jhorarpar L.P. School is situated about 2 Kms away from said Badlapara L.P. School, separated by a railway line without having any crossing point, whereas, said Badlapara L.P. School is in a char area imparting Education to the local children of village Baniamari Part-VI within Makrijhara of District - Dhubri.

7) Hence, this writ petition by the petitioners to set aside the impugned decision regarding identification of 2409/No.B Jhorarpar L.P. School as the Base

School in respect of Badlapara L.P. School.

8) It is seen that though the District Scrutiny Committee, Dhubri while recommended the names of teaching staff of said Badlapara L.P. School for provincialisation under the said 2017 Act as Tutors identifying 1334 No. Piajbari J B School, a provincialised School as the Base School, but in the order dated 05.02.2021, issued by the Director of Elementary Education, Assam, 2409/No.B Jhorarpar L.P. School has been identified as the Base School.

9) Section 14 of said 2017 Act relates to "Appellate Authority", which reads 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."

10) 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.*"

11) As there is a statutory provision of appeal under the said 2017 Act, the petitioners are directed to prefer an appeal before the Secretary, Department of School Education (Elementary), Assam as provided under Section 14 of said 2017 Act as amended, forthwith for redressal of their grievances along with the certified copy of this order and a copy of this writ petition including the Annexures appended thereto before the Secretary, Department of School Education (Elementary), Assam, noted above, obtaining necessary

acknowledgement from the said authority in that regard.

12) In the event of filing of such appeal by the petitioners before the Secretary, Department of School Education (Elementary), Assam forthwith, the said authority on due verification as well as recommendation in original shall dispose of their said appeal by a reasoned order preferably within a period of 3 (three) months from the date of receipt of the said appeal from the petitioners intimating the outcome of their said appeal.

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

JUDGE

Comparing Assistant