

GAHC010043592023



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

Case No. : WP(C)/1347/2023

GULNEHAR BEGUM
D/O- LT. SHAFIATULLAH AHMED, R/O- VILL- JHAGRARPUR, PART-I, P.O.
KHALILPUR, DIST.- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT., DISPUR, GHY-6

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIST.- DHUBRI
ASSAM
PIN- 781039

4:THE EXECUTIVE DIRECTOR
SARBA SIKSHA ABHIYAN MISSION ASSAM
KAHILIPARA
GUWAHATI- 781019

5:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI
REP. BY ITS CHAIRMAN
DIST.- DHUBRI
ASSAM

6:SHRI AKTAR HUSSAIN SK.

S/O- LT. MOMIR ALI
R/O- VILL- AMBARIGAON
P.O. ALOMGANJ
DIST.- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

15.03.2023

Heard Mr. P K Deka, learned counsel for the petitioner and Mr. B Koushik, learned Standing counsel, Department of School Education for the respondent Nos. 1, 2 & 3. Also heard Mr. B Gogoi, learned Standing counsel, SSA for the respondent No. 4 as well as Mr. G Bokalia, learned Government Advocate, Assam for the respondent No. 5.

Petitioner had the requisite qualification to be appointed as an Assistant Teacher in Upper Primary School of the State.

During the venture stage of Biraj Mohan Kumudini Dutta M.E. School in the Gauripur Education Block of District-Dhubri, the petitioner was appointed as an Assistant Teacher to teach Assamese to the students of the said school and accordingly, the petitioner joined her said service on 22.03.2004.

It is submitted by the petitioner that while the services of the teaching and non-teaching staff of the said school were taken up for consideration of provincialisation under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 as amended, the District Scrutiny Committee (DSC) considering the numbers of enrollment of students in the said school though recommended her name, but the State Level Scrutiny Committee (SLSC) did not consider her name for provincialisation of her service and recommended only three Teachers of the said school, namely, Robi Chandra Nath, Mehebab Alom and the

respondent No. 6.

Being aggrieved, the petitioner preferred a writ petition being WP(C) 4670/2021 that was disposed of on 16.09.2021 directing the Director of Elementary Education (DEE), Assam to examine the aspect as to whether Biraj Mohan Kumudini Dutta M.E. School has number of students between 31 to 120 and if yes, whether one additional post of teacher can be provincialised over and above the three teachers who were provincialised under Section 3 (1) (xi) of said 2017 Act.

By the said order dated 16.09.2021 passed in WP(C) No. 4670/2021 the Court further observed that if during the said process of examination, the DEE, Assam arrives at its conclusion that the said school is entitled to one additional post of teacher, he would further examine as to which teacher of the said school is to be provincialised against the additional post and in doing so, the case of the petitioner shall also be given due consideration.

Pursuant to the said order dated 16.09.2021 passed in WP(C) No. 4670/2021, the Director of Elementary Education, Assam after due consideration vide order No. EPD/H/254/2022/63 dated 19.11.2022 rejected the claim of the petitioner for provincialisation of her service, as it was found that said Biraj Mohan Kumudini Dutta M.E. School had less than 105 enrollment to have more than three teachers as per the provisions of the said 2017 Act, for which the State Level Scrutiny Committee as well as the Joint Committee could not recommend the name of the petitioner for provincialisation of her service though recommended by the DSC.

Though petitioner preferred a contempt petition being Cont.Cas (C) No. 604/2022 for non-compliance of the order dated 16.09.2021 passed in WP(C) No. 4670/2021, the Court on 23.01.2023 closed the said contempt proceeding as the respondent authority i.e., the DEE, Assam in the meanwhile on 19.11.2022 passed the said order in compliance of the order dated 16.09.2021 passed in WP(C) No. 4670/2021.

However, while closing the said contempt petition on 23.01.2023 the Court granted liberty to the petitioner to challenge the said order dated 19.11.2022 of the DEE, Assam, if so aggrieved by the same.

Petitioner has placed before the Court that while the DSC considered her case and

recommended her name for provincialisation, it found that enrollment in the year 2014, 2015 and 2016 in that school is at an average of 105.23 and accordingly recommended the name of the petitioner for provincialisation of her service, considering such enrollment of students in the said school in those three years.

Petitioner has also placed before the Court the DISE data of 2018-2019 of having 107 Nos. of enrollment of boys and girls pertaining to said Biraj Mohan Kumudini Dutta M.E. School.

Petitioner contended that considering the relevant years of 2014, 2015, 2016 as well as 2018–2019, having more than 105 enrollments in the said school, she is entitled for provincialisation of her service as provided in the said 2017 Act.

Section 3 (1) (xi) of said 2017 Act provides that-

“(xi) 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 3 (1) (xii) of said 2017 Act provides that-

“(xii) The enrollment shall be verified with the data as per DISE Code 2009-10 or before as available in the records of the National University of Educational Planning and Administration, New Delhi. There shall be physical verification of students and checking of records of attendance of students of last three years.”

In the case in hand, the petitioner failed to place the numbers of enrollment of students in said Biraj Mohan Kumudini Dutta M.E. School as per the data recorded in DISE Code of 2009-10 or before, requiring provincialisation of an additional Teacher in said Biraj Mohan Kumudini Dutta M.E. School at the relevant point of time.

After hearing the learned counsels for the parties and considering the entire

aspect of the matter and for the reasons above, this Court is of the view that the impugned order No. EPD/H/254/2022/63 dated 19.11.2022 of the Director of Elementary Education, Assam does not call for any interference by this Court in exercise of the power under Article 226 of the Constitution of India.

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

JUDGE

Comparing Assistant