

GAHC010190822022



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

Case No. : WP(C)/1623/2021

RUPALI NARAH
D/O- JUNARAM NARAH
R/O- VILL- NA BHANGA MUK
P.O.- CHIRAM BONAMALI
BLOCK- KAMALABARI
DIST.- MAJULI
ASSAM

VERSUS

THE COMMISSIONER AND SECRETARY TO THE ELEMENTARY EDUCATION
DEPTT AND 7 ORS
GOVT. OF ASSAM
DISPUR
GHY-06

2:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY-19
KAMRUP (M)
ASSAM

3:THE DISTRICT SCRUTINY COMMITTEE
MAJULI/JORHAT DISTRICT
REP. BY DY. COMMISSIONER
MAJULI/JORHAT DISTRICT

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MAJULI/JORHAT DISTRICT

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
MAJULI
DIST.- MAJULI

6:AMULYA PRASAD SAIKIA
HEAD MASTER OF NA BHANGA JANAJATI M.E. SCHOOL
VILL- NA BHANGA MUKH
P.O. CHIRAM BONAMALI
BLOCK- KAMALABARI
DIST.- MAJULI
ASSAM

7:DEVI RAM TAHU
TUTOR
NA BHANGA JANAJATI M.E. SCHOOL
VILL- NA BHANGA MUKH
P.O. CHIRAM BONAMALI
BLOCK- KAMALABARI
DIST.- MAJULI
ASSAM

8:THAGIRAM DAS
VILL- NA BHANGA MUKH
P.O. CHIRAM BONAMALI
BLOCK- KAMALABARI
DIST.- MAJULI
ASSAM

Advocate for : MR. B K DAS
Advocate for : SC

ELEM. EDU appearing for THE COMMISSIONER AND SECRETARY TO THE
ELEMENTARY EDUCATION DEPTT AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

14.02.2023.

Heard Mr. B K Das, learned counsel for the writ petitioner and Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4 & 5. Also heard Ms. D Das Barman, learned Government Advocate, Assam for the respondent No. 3; Mr. P Mahanta, learned counsel for the respondent No. 6

as well as Mr. D Deka, learned counsel for the respondent No. 7.

The petitioner, respondent No. 6, respondent No. 7 and respondent No. 8 were appointed as Assistant Teachers in Na Bhanga Janajati M.E. (rural) School in the Ujani Majuli Education Block of erstwhile district of Jorhat, presently District-Majuli during its venture stage.

The petitioner, a graduate with Diploma in Elementary Education joined the said M.E. school on 05.01.1998, the respondent No. 6, Headmaster of the said M.E. school joined his service on 04.01.1996, the respondent No. 7 joined the said M.E. school on 05.10.2006 and the respondent No. 8 joined the said M.E. School on 04.01.1986.

The claim of the petitioner is that she was teaching Social Science to the students of the said M.E. school. However, when the matter was taken up for consideration for provincialisation of services of the teaching and non-teaching staff of the said M.E. school under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended, the name of the respondent Nos. 6, 7 & 8 were considered by the authorities concerned and were provincialised under the provisions of the said 2017 Act, disregarding the better claim of the petitioner.

Being aggrieved, the petitioner has filed this writ petition on 04.03.2021.

While issuing notice to the respondents, the Court on 12.03.2021 found that the respondent No. 6 was teaching all the subjects, whereas the petitioner is a teacher of Social Science and since Section 3 (1) (xi) of the said 2017 Act allowed provincialisation of services of one Science and Mathematics teacher, one Language Teacher and one Social Science Teacher, directed the respondent authorities not to give further benefit of provincialisation to the respondent No. 6, which is still in force.

Being aggrieved with such interim order dated 12.03.2021, the respondent No. 6 has filed an Interlocutory Application being I.A. (C) No. 2859/2022 in the present writ petition for vacation/modification/alteration of the said interim order dated 12.03.2021, noted above.

Mr. A Phukan, Standing counsel, Department of School (Elementary) Education has placed the records of the District Scrutiny Committee (Elementary), Jorhat pertaining to

recommendation of the teaching staff of said Na Bhanga Janajati M.E. school consisting the names of the respondent Nos. 6, 7 and another namely, Trishna Rani Dutta eligible for provincialisation and that of the petitioner and respondent Nos. 8 as not eligible for provincialisation on the ground of non-availability of required enrollment.

The Director of Elementary Education (DEE), Assam has filed an affidavit in the matter, stating that as provided under Section 13 (5) & 13 (6) of the said 2017 Act, the concerned District Scrutiny Committee (DSC) after scrutinizing the relevant documents prepared the list of all Venture Educational Institutions including said Na Bhanga Janajati M.E. School and recommended the names of the respondent Nos. 6, 7 & 8 for provincialisation of their services as tutors and in the said recommendation the concerned DSC observed that the petitioner, an Assistant Teacher, is not entitled for provincialisation.

Accordingly, the State Level Scrutiny Committee recommended the names of the respondent Nos. 6, 7 & 8 for provincialisation of their services as tutors under the said 2017 Act, as amended.

From the report of the DSC, Jorhat pertaining to Na Bhanga Janajati M.E. School, it is seen that the respondent No. 6 was teaching English, respondent No. 8 was teaching Assamese, whereas the respondent No. 7 was teaching Hindi.

The report of the DSC, Jorhat clearly reflects that the petitioner was teaching Social Science.

The determination of provincialisation of teaching staff of any such venture M.E. school as provided under the said 2017 Act does not pertain to seniority, but the requirement, as noted above, is one Science and Mathematics Teacher, one Language Teacher and one Social Science Teacher.

The respondent No. 6 as well as the respondent No. 7 were teaching language, i.e., English and Hindi, respectively and as per the provisions of said 2017 Act, service of only one Language Teacher could be provincialised.

The finding of the DSC, Jorhat was very clear that the petitioner was teaching Social Science in the said M.E. school.

The District Information System for Education (DISE) data of said Na Bhanga Janajati M.E. school with its DISE Code No. 0416107, annexed to this writ petition clearly

reflects that the school in question is a Three Classes Co-Educational Venture Upper Primary School and the petitioner, respondent No.6, respondent No. 7 as well as respondent No. 8 used to teach all subjects as recorded in the said DISE data.

Section 13 (xi) of the said 2017 Act provides as follows-

“The State Level Scrutiny Committee shall have to cause physical verification of all institution and will also inspect all documents and records produced before it and call for such other records and documents as may be required for the purpose of causing verification.”

Section 13 (xii) of the said 2017 Act provides as follows-

“When there arises difference in between the recommendation of the District Scrutiny Committee and the Physical verification report caused by the State Level Scrutiny Committee, the matter shall be placed before the State Level Scrutiny Committee and the decision of the State Level Scrutiny Committee shall be final.”

As noted above, Section 13 (xi) of the said 2017 Act provides that the State Level Scrutiny Committee is required to cause physical verification and inspection of all documents and records and call for such other records and documents as may be required for the purpose of causing verification.

In the case in hand, it is seen from the records as well as the affidavit of the Director of Elementary Education, Assam, who is also the Chairman of the State Level Scrutiny Committee that apparently without any verification of the relevant documents, the services of the respondent Nos. 6 & 7 were provincialised merely on the basis of the recommendation of the District Scrutiny Committee, Jorhat without considering the fact that there is a requirement of a Social Science Teacher in said Na Bhanga Janajati M.E. school for its provincialisation under the said 2017 Act, where the petitioner was serving as a Social Science Teacher.

The Court after perusal of the relevant documents and records as well as the affidavit of the DEE, Assam found that the State Level Scrutiny Committee did not verify the relevant records pertaining to the subjects taught by the petitioner, the respondent No. 6 as well as the respondent No. 7.

It is brought to the notice of the Court that the respondent No. 8, Thagiram Das, Assistant Teacher of said M.E. School teaching Assamese expired on 14.07.2021 and in that regard a Death Certificate issued by the Registrar of Births and Deaths, Jengraimukh Mini Public Health Centre, Majuli is placed before the Court.

Considering the above, the provincialisation of service of the respondent No. 6 under the provisions of said 2017 Act as amended is set aside and quashed.

Section 14 of said 2017 Act provides for 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.”

The Hon'ble Supreme Court in the case of *Commissioner of Income Tax and Another -Vs- Chhabil Dass Agarwal*, reported in (2014) 1 SCC 603 have held that when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision.

As such, the petitioner as well as the respondent No. 6 may prefer respective appeals before the Chairman, State Level Scrutiny Committee forthwith along with a certified copy of this order, under Section 14 of said 2017 Act for provincialisation of their services, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such appeals by the petitioner as well as the respondent No. 6 before the Chairman, State Level Scrutiny Committee forthwith, the concerned appellate authority shall dispose of said appeal within a period of 90 days from the date of its receipt with a reasoned order, after verification of the relevant records and after giving an opportunity of hearing to the petitioner as well as the respondent No. 6 and other provincialised teachers/tutors of said Na Bhanga Janajati M.E. School, District-Majuli, intimating the petitioner about the outcome of the same.

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

The relevant records placed before the Court be returned to Mr. A Phukan, Standing counsel, Department of School (Elementary) Education.

JUDGE

Comparing Assistant