

GAHC010046382021



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

Case No. : WP(C)/1736/2021

PRANAB BORAH@ PRANAV BORAH
S/O SRI GOPAL BORA,
RESIDENT OF VILLAGE AKHOIPHUTIA, PO MOHAIMARI, PS
DHAKUAKHANA, DIST LAKHIMPUR ASSAM 787051

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM EDUCATION(ELEMENTARY) DEPARTMENT, DISPUR GUWAHATI
781006

2:THE DIRECTOR
DIRECTORATE OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI 19 CUM CHAIRMAN OF THE STATE LEVEL SCRUTINY
COMMITTEE

3:THE DEPUTY COMMISSIONER
LAKHIMPUR CUM CHAIRMAN OF THE DISTRICT LEVEL SCRUTINY
COMMITTEE
LAKHIMPUR ASSAM 787001

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LDC LAKHIMPUR

DIST LAKHIMPUR ASSAM 787001

5:SRI BISWAJIT CHUTIA

S/O MILAN CHUTIA

RESIDENT OF VILLAGE KORANGA
PO PATIRCHUK
PS GHILAMARA
DIST LAKHIMPUR
ASSAM 78705

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30-01-2023

Heard Mr. K. R. Patgiri, learned counsel for the petitioner and Mr. P. N. Sarma, learned Standing Counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2 and 4. Also heard Mr. G. Bokolial, learned Government Advocate, Assam for the respondent No.3.

It is contended by the petitioner that since 26.02.1998, he is serving as Assistant Teacher in No.1 Akhoiphutia Lower Primary School, Dhakuakhana under Bordoloni Education Block of District-Lakhimpur since its venture stage, whereas, the respondent No.5 joined the said School only on 13.08.2007.

Earlier, the Headmaster of said School submitted the relevant documents for provincialisation of teaching staff of the said School under the provisions of the *Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011*, amended in 2012, during its force.

As the said authority while submitting the relevant documents of the teaching staff of the said School including the name of the respondent No. 5 for provincialisation under the said 2011 Act, did not submit the relevant documents of the petitioner, he preferred a writ petition, being WP(C) No. 3455/2015 and the Court on 28.09.2015, while issuing notice to the respondents therein, in the interim, observed that until further order, the service of said private respondent, i.e., respondent No. 8 in WP(C) No. 3455/2015 (present respondent No.5)

should not be provincialised by the official respondent Nos. 1 to 5 therein without considering the claim of the petitioner and without the leave of the Court.

By an order dated 07.06.2017 said WP(C) No. 3455/2015 was disposed of considering the fact that a Division Bench of this Court by judgment and order dated 23.09.2016 passed in the case of *Shri Chandan Kr. Neog & Ors. -Vs- the State of Assam and Ors. (WP(C) No. 3190/2012)* declared the said 2011 Act as ultra vires, directed the petitioner that as in the meanwhile *the Assam Education (Provincialisation of Services of Teachers And Re-Organisation Of Educational Institutions) Act, 2017*, have been enacted, if the petitioner is aggrieved by any further action on the part of the respondent authorities to any process of provincialisation under the said 2017 Act, he would be at liberty to approach the Court again.

During the deliberation of the matter, Mr. Patgiri, learned counsel on instruction submitted that said No.1 Akhoiphutia Lower Primary School, Dhakuakhana under Bordoloni Education Block of Lakhimpur District was provincialised along with its Headmaster Sri T. C. Gogoi and the respondent No.5 namely, Sri Biswajit Chutia on the recommendation of the District Scrutiny Committee (Elementary), Lakhimpur leaving out the petitioner without considering his better claim, who is also senior to the respondent No.5.

Being aggrieved, the petitioner has preferred this writ petition.

Mr. Patgiri, learned counsel for the petitioner also submitted that the petitioner has preferred an appeal before the Commissioner and Secretary to the Government of Assam in the Elementary Education Department for consideration of his case in February, 2021 itself, which is yet to be considered.

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."

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 the case of the petitioner has not been recommended by the District Scrutiny Committee for Elementary Education Department, Lakhimpur for provincialisation of his service under the provisions of said 2017 Act, this writ petition is disposed of directing the petitioner to prefer an appeal before the Director of Elementary Education, Assam-cum-Chairman of the State Level Scrutiny Committee, on or before **15.03.2023** along with a certified copy of this order, including a copy of this writ petition and the Annexures appended thereto before the said authority, obtaining necessary acknowledgement from the said authority in that regard.

In the event of filing of such appeal by the petitioner before the Director of Elementary Education, Assam-cum-Chairman of the State Level Scrutiny Committee within the time so specified, after giving an opportunity of hearing to the petitioner as well as the respondent No. 5 and considering all the relevant documents, the said authority shall dispose of the said appeal by a reasoned order within a period of 90 (ninety) days from the date of receipt of the appeal of the petitioner intimating him and the respondent No. 5 about the outcome of the same.

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

JUDGE

Comparing Assistant