

GAHC010046402022



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

Case No. : WP(C)/1724/2022

KANCHAYAN TALUKDAR
D/O. SRI DHARANI DHAR TALUKDAR, VILL. BAHARI, P.O. BAHARI HAT,
P.S. TARABARI, DIST. BARPETA, ASSAM, PIN-781302.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT SCRUTINY COMMITTEE
FOR ELEMENTARY EDUCATION REP. BY ITS CHAIRMAN CUM DEPUTY
COMMISSIONER OF BARPETA DISTRICT
ASSAM

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
DIST. BARPETA
ASSAM

6:THE BLOCK ELEMENTARY EDUCATION OFFICER

CHENGA
DIST. BARPETA
ASSAM.

7:MD. KABIR ALI

S/O. LT. NAZIR MIYA
VILL. BAHIA
P.O. BHOGDIA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN-781035.

8:MD. MOKADDESH ALI

S/O. ABDUL GOFUR
VIL. BANDALI RESERVE
P.O. JATRADIA
P.S. TARABARI
DIST. BARPETA
ASSAM
PIN-781305

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

06-02-2023

Heard Mr. M. Ali, learned counsel for the petitioner and Mr. A. Phukan, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2, 3, 5 & 6. Also heard Mr. P. Saikia, learned Government Advocate, Assam for the respondent No. 4 and Mr. D. Hussain,

learned counsel for the private respondent Nos. 7 & 8.

2. Petitioner is an Arts Graduate from Gauhati University in the year 1988 and she passed her Diploma in Elementary Education (ODL) Course for the Sessions 2017-2019 from the Basic Training Centre, Chenga, Barpeta in the year 2019.

3. Pursuant to the resolution dated 23.12.2001 adopted by the School Managing Committee of Uttar Baguribari 2 Classes M.E. School under Chenga Education Block in the District of Barpeta, during its venture stage, its Secretary -cum- Headmaster on 24.12.2001, appointed the petitioner as a Sectional Teacher of Class-V in the said Venture M.E. School. The petitioner on 24.12.2001 joined her said service as a Sectional Teacher in the said venture M.E. School. The School authorities, thereafter, on 04.09.2007, during its venture stage, upgraded her service to the post of Assistant Teacher in the said M.E. School wherein she taught Social Science to its students.

4. While provincialising the services of the teaching staff of the said venture M.E.School under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 as amended, the Director of Secondary Education, Assam vide Notification No. EPD-46/2017/Pt-I/42 dated 04.02.2021 notified the names of the respondent No. 7, Md. Kabir Ali; the respondent No. 8, Mokaddush Ali and one Faijur Rahman at Sl. Nos. 194, 196 & 195, respectively in the website of the DSE, Assam as eligible for provincialisation of their services as "Tutors" under the provisions of said 2017 Act.

5. Not finding her name for provincialisation of service under the said 2017 Act, the petitioner has preferred this writ petition stating that the Headmaster of said School, while submitting the relevant information including the educational and professional qualifications of the teachers of the said Uttar Baguribari 2 Classes M.E. School before the District Scrutiny Committee, District-Barpeta (Annexure-9 to this petition) clearly stated that she is a Social Science Teacher, respondent No. 7 is an English Language Teacher and the respondent No. 8 is an Assamese Language Teacher of the said M.E.School.

6. Placing Section 3 (1)(xi) of said 2017 Act, Mr. Ali, learned counsel for the petitioner submitted that the respondent authorities committed illegality in considering the case of the respondent Nos. 7 & 8 for provincialisation of their services, being the Language Teachers of English and Assamese, respectively, disregarding the claim of the petitioner who is a Social Science Teacher.

7. The Court considering such facts, while issuing notice to the respondents on 11.03.2022, on

finding that the respondent Nos. 7 & 8 are Language Teachers in the said M.E. School, whereas the respondent No. 7 is senior to the respondent No. 8 since the respondent No. 7 joined the said School on 03.01.1994 and the respondent No. 8 joined the said school on 01.08.1998, therefore, stayed the benefit of provincialisation of service given to the respondent No. 8. Said interim order is still in force.

8. Mr. Hussain, learned counsel for the respondent No. 8, stated that he has received instruction in the matter that the respondent No. 8, Md. Mokaddush Ali had expired on 27.12.2022, during pendency of this petition.

9. From the Unified District Information System for Education (U-DISE +) of said Uttar Baguribari 2 Classes M.E. School with U-DISE Code 18050507906 in terms of the Data Capture Format-Report annexed to this petition by the petitioner as Annexure-8, it is seen that at Clause 3.3-Teachers and Instructors (Including Head Master/Mistress) under Teacher Profile No. 1, contains the name of the respondent No. 8 who joined his service in the said M.E. School on 01.08.1998 and at Sl. 13, it is specified that the respondent No. 8 taught Social Studies under the heading of Main Subject Taught 1 and at Sl. No. 14 under the heading of the Main Subject Taught 2, it is specified that he taught Language.

10. In the same U-DISE, at Clause 3.3-Teacher Profile No. 2 that contains the name of the petitioner who joined her service on 24.12.2001 in said school at Sl No. 13 under the Main Subject Taught 1, it is seen that the petitioner taught Social Studies and at Sl No. 14, it is seen as nil (x) under the heading of the Main Subject Taught 2 and the said aspect of the U-DISE under the Data Capture Format, has not been challenged by the petitioner.

11. Section 3 (1)(xi) of said 2017 Act stipulates as follows:-

“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).

12. 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."

13. 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 held that "when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision".

14. After hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the petitioner to prefer a statutory appeal before the Secretary to the Government of Assam in the Department of School (Elementary) Education as provided under Section 14 of said 2017 Act as amended, forthwith along with a certified copy of this order including a copy of this writ petition as well as the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

15. In the event of filing such statutory appeal by the petitioner as directed above, the Secretary to the Government of Assam in the Department of School (Elementary) Education on verification of the relevant records, shall dispose of the said statutory appeal of the petitioner with a reasoned order within a period of 90 (ninety) days after giving an opportunity of hearing to the petitioner intimating her about the outcome of said appeal.

16. In the meanwhile, if it is found by the Secretary to the Government of Assam in the Department of School (Elementary) Education that the respondent No. 8 was duly considered for provincialisation of his service as a Social Science Teacher and not as a Language Teacher of said Uttar Baguribari 2 Classes M.E. School under the said 2017 Act, in that circumstance, service of the respondent No. 8 shall be provincialised from the date of other teaching staff of the said school whose services have already been provincialised under the said 2017 Act.

17. As the service of the respondent No. 8 could not be provincialised because of the interim order passed earlier in this proceeding on 11.03.2022, if the concerned appellate authority comes to the conclusion that the service of the respondent No. 8 was duly provincialised as a Social Science Teacher in the said M.E. School, then his service shall stand provincialised as a Tutor w.e.f. the date of provincialisation of service of the respondent No. 7 and other teaching staff of the said school under

the said 2017 Act and in his absence, his wife shall be paid his salary from such date of provincialisation of the service till 26.12.2022, considering the fact that the respondent No. 8 expired on 27.12.2022.

18. However, if the Secretary to the Government of Assam in the Department of School (Elementary) Education while disposing of the said appeal of the petitioner comes to the conclusion that it is the petitioner whose service should have been provincialised under the said 2017 Act, in that case, her service as a "Tutor" shall be provincialised from the date when the service of the other teaching staff of the said M.E.School including the respondent No. 7 had been provincialised and she shall be paid her all such service benefits, including her salary and other consequential service benefits, accordingly.

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

JUDGE

Comparing Assistant