

GAHC010050462021



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

Case No. : WP(C)/2120/2021

ABDUL MANNAN
S/O- JASMAT ALI, R/O- VILL- 113 NEW PIRADHARA, P.O. PIRADHARA, P.S.
ABHAYAPURI, DIST.- BONGAIGAON, ASSAM, PIN- 783384

VERSUS

THE GOVT OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-19

2:THE DIRECTOR OF ELEMENTARY EDUCATION DEPTT.
KAHILIPARA
GHY-19
ASSAM

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
BONGAIGAON DISTRICT
DIST.- BONGAIGAON
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
BONGAIGAON DISTRICT CIRCLE
DIST.- BONGAIGAON
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
SRIJANGRAM
DIST.- BONGAIGAON
ASSAM

6:EUSUF ALI
NEW PIRADHARA M.E MADRASSA SCHOOL

P.S. ABHAYAPURI
P.O. PIRADHARA
DIST.- BONGAIGAON
ASSAM
PIN- 783384

7:MOFIDA KHATUN
NEW PIRADHARA M.E MADRASSA SCHOOL
P.S. ABHAYAPURI
P.O. PIRADHARA
DIST.- BONGAIGAON
ASSAM
PIN- 78338

Advocate for the Petitioner : MR. P SAIKIA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09.01.2023

Heard Ms. B. Gogoi, learned counsel for the petitioner and Mr. U. Sarma, learned Standing counsel, Department of School Education (Elementary), Assam for the respondent Nos. 1, 2, 4 & 5. Also heard Mr. S.R. Baruah, learned Government Advocate, Assam for the respondent No. 3; Mr. A.R. Bhuyan, learned counsel for the respondent No. 6 and Mr. M. Dutta, learned counsel for the respondent No. 7.

The petitioner and the respondent Nos. 6 & 7 were serving as Assistant Teachers in New Piradhara M.E. Madrassa, Piradhara under the Srijangram Education Block in the district of Bongaigaon since its venture stage.

The petitioner alleged that the services of respondent Nos. 6 and 7 have been provincialised as tutors under the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended, disregarding his better claim.

Being aggrieved, the petitioner has preferred this writ petition.

It is submitted by the petitioner that though he is senior in service than the respondent Nos. 6 & 7 in said New Piradhara M.E. Madrassa, Piradhara, Bongaigaon, but the respondent authorities have illegally provincialised the services of those two respondents as tutors under the said 2017 Act.

The petitioner placed before the Court that w.e.f. 30.01.1993, he served as an Assamese Language Teacher; the respondent No. 6 w.e.f. 17.11.1997 served as an English Language Teacher and the respondent No. 7 w.e.f. 14.06.2010 served as a Social Science Teacher in said New Piradhara M.E. Madrassa, whereas in case of Provincialisation of Venture Upper Primary/M.E./M.V./M.E. Madrassa of the State under the provisions of Section 3(1)(xi) of said 2017 Act only one Assistant Teacher of Mathematics and Science, one Social Science Teacher and one Language Teacher can be provincialised.

After considering the fact that the petitioner is a Language Teacher teaching Assamese and the respondent No. 6 is also a Language Teacher teaching English and finding that the respondent Nos. 6 and 7 are juniors to the petitioner in service, the Court by order dated 24.03.2021 while issuing notice to the respondents, in the interim, suspended the benefits of provincialisation granted to the respondent No. 6 until further orders of the Court.

Section 14 of said 2017 Act as amended provides for statutory appeal 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.”*

After hearing the parties and considering the entire aspects of the matter, the petitioner is directed to submit his statutory appeal before the Secretary in the Department of School (Elementary) Education, Assam as provided under Section 14 of said 2017 Act **on or**

before 31.01.2023 along with a certified copy of this order; a copy of this writ petition including the annexures appended thereto obtaining necessary acknowledgement from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary in the Department of School (Elementary) Education, Assam on verification of the relevant records obtained from the concerned State Level Scrutiny Committee, the District Elementary Education Officer, Bongaigaon; the Block Elementary Education Officer, Srijangram Education Block and other concerned authorities pertaining to said New Piradhara M.E. School, Bogaigaon and the employees serving in that school, 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 as well as the respondent Nos. 6 & 7, intimating them about the outcome of said appeal.

Subject to filing of such statutory appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam **on or before 31.01.2023**, as directed above, in terms of the interim observation made by the Court on 24.03.2021 in the present proceeding, the benefit of provincialisation of the respondent No. 6 under the provisions of the said 2017 Act shall remain suspended, till such disposal of the statutory appeal of the petitioner.

However, it is made clear that if after hearing the petitioner and the respondent Nos. 6 & 7 and on scrutiny of the documents etc., the concerned statutory appellate authority comes to the determination that those two respondents were duly provincialised following the provisions of the said 2017 Act, the respondent authorities shall grant the benefit of provincialisation to the respondent No. 6 from the date of giving effect of provincialisation of other teachers of the said school under the said 2017 Act and arrear salary as well as regular salary shall be paid to the respondent No. 6.

In the case, after such hearing, the said statutory appellate authority comes to the conclusion that the petitioner's service should have been provincialised following the provisions of the said 2017 Act, then the respondent authorities shall provincialise his service from the date of giving effect of provincialisation of the other teachers of said New Piradhara M.E.

School, Piradhara under the Srijangram Education Block of Bongaigaon district and shall pay him his arrear salary as well as regular salary from the date of giving effect of provincialisation of the service of the petitioner.

However, failure on the part of the petitioner to prefer such statutory appeal before the Secretary, Department of School (Elementary) Education, Assam within the time so specified, the order passed earlier by this Court on 24.03.2021 shall stand automatically vacated.

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

JUDGE

Comparing Assistant