

GAHC010052742021



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

Case No. : WP(C)/1964/2021

JAKIR HUSSAIN
S/O. LT. DELOWAR HUSSAIN, VILL. GOLAPARA PART-III EAST P.O.
GOLAPARA, P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM, PIN-783384.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY.-19.

3:THE JOINT DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE

BONGAIGAON
REP. BY THE DY. COMMISSIONER
BONGAIGAON
ASSAM
PIN-783384.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BONGAIGAON
ASSAM
PIN-783384.

6:THE DY. INSPECTOR OF SCHOOLS

BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783384.

7:THE BLOCK ELEMENTARY EDUCATION OFFICER

SRIJANGRAM
DIST. BONGAIGAON
ASSAM
PIN-783384

Advocate for the Petitioner : MR A A DEWAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20.01.2023

Heard Mr. A A Dewan, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 3, 5, 6 & 7. Also heard Mr. S. R Baruah, learned Government Advocate, Assam for the respondent No. 4.

2. The Managing Committee of Gonbinna Madrassa, under Srijangram Educational Block of District-Bongaigaon during its venture stage by resolution dated 27.05.2008 appointed the petitioner, a Science Graduate with Physics, Chemistry and Mathematics, as a Science Teacher in the said Madrassa. Pursuant to the same, the petitioner joined the said Madrassa on 04.06.2008 and since then, he is serving in the said Madrassa. The petitioner has also obtained Diploma in Elementary Education from the National Institute of Open Schooling, examination of which was held in March, 2019.

3. For the purpose of provincialisation of the teaching and non-teaching staff of said Madrassa, though the name of the petitioner was placed before the concerned District Scrutiny Committee (Elementary) of Bongaigaon District for provincialisation of his service along with other teachers of the said Madrassa under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* but the said DSC, Bongaigaon District disregarding his better claim recommended one Rofiqul Islam as a Science Teacher along with two others for provincialisation of their services under the said 2017 Act.

4. On coming to know about the same, regarding wrong incorporation of the name of one Rofiqul Islam as Science Teacher in the said Madrassa in place of the petitioner, the Headmaster of the said Madrassa on 01.01.2020 submitted a representation before the District Elementary Education Officer, Bongaigaon clarifying the staff pattern of the said Madrassa that was duly received by the said office on 01.01.2020 vide receipt No. 001. The said DEEO, Bongaigaon on 02.01.2020 after due verification wrote to the Director of Elementary Education, Assam regarding non-inclusion of the name of Jakir Hussain, the petitioner, Assistant Teacher of Science of the said Madrassa in the concerned list as eligible teacher for provincialisation and forwarded the said application dated 01.01.2020 of the Headmaster of the said Madrassa.

5. As nothing progressed, the petitioner again on 17.02.2021 submitted a representation before the DEEO, Bongaigaon who in turn vide letter No. Genl-118/Provn/UPS/2021/196 dated 17.02.2021 again wrote to the DEE, Assam informing him that the name of the Science Teacher of said M.E. Madrassa was wrongly entered as Rofiqul Islam in place of the petitioner, Jakir Hussain, B.Sc., Science Teacher of the said Madrassa requesting the DEE, Assam to cancel the name of said Rofiqul Islam whose name was wrongly entered substituting the name of the petitioner, the original Science Teacher of the said Madrassa and for issuance of appointment letter in favour of the petitioner as a Science Teacher of the said Madrassa.

6. In spite of those, since the respondents in the Elementary Education Department did not consider his case, being aggrieved; the petitioner has preferred this writ petition.

7. Notice in this case was issued on 21.09.2021 but the respondents in the Elementary Education did not bother to file their affidavits in the matter.

8. However, the Director of Elementary Education (DEE), Assam through its Standing counsel vide communication No. EPD/H/267/2021/52 dated 12.01.2023 apprised the Court that after due verification the DEEO, Bongaigaon vide communication No. WP(C)-1964/2021/1039 dated 22.04.2022 intimated the office of the DEE, Assam that it is the petitioner Jakir Hussain, B.Sc., Science Graduate Teacher with Mathematics who is teaching Mathematics and Science in the said Gonbinna Madrassa since 04.06.2008 and that there is no such teacher working in the said Madrassa by the name of Rofiquel Islam and that the DSC, Bongaigaon might have wrongly entered the name of said Rofiquel Islam as a Science and Mathematics Teacher of said Madrassa and recommended his name; though the name of the petitioner Jakir Hussain should have been recommended by the concerned DSC, Bongaigaon since it is the petitioner Jakir Hussain who is the Science and Mathematics Teacher of the said Madrassa.

9. The DEEO, Bongaigaon in the said letter dated 22.04.2022 clarified that the name of the petitioner Jakir Hussain was also found at the DISE of 2009-10 pertaining to said Madrassa and that the Headmaster of the said Madrassa in his report submitted before the DSC, Bongaigaon named the petitioner Jakir Hussain as the Science and Mathematics Teacher of the said Madrassa and did not mention the name of said Rofiquel Islam.

10. 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."

11. The Hon'ble Supreme Court in the case of *the 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."

12. Mr. P K Bora, Standing counsel, Department of School (Elementary) Education shall provide the communication of the DEEO, Bongaigaon under No. WP(C)-1964/2021/1039 dated 22.04.2022 as well as the letter of the Director of Elementary Education, Assam

under No. EPD/H/267/2021/52 dated 12.01.2023 to the petitioner.

13. Since the case of the petitioner was not considered by the District Scrutiny Committee (Elementary) of Bongaigaon District for provincialisation of his service under the said 2017 Act as Science and Mathematics Teacher of said Gonbinna Madrassa, under Srijangram Educational Block of District-Bongaigaon and wrongly incorporated the name of one Rofiquil Islam instead of the petitioner though the petitioner is the genuine Science and Mathematics Teacher of the said Madrassa, serving in it since 04.06.2008, name duly recorded in the DISE of the said Madrassa of 2009-10 and there is no such Teacher by the name of Rofiquil Islam in the said Madrassa and affirmed by DEEO, Bongaigaon in his letter dated 22.04.2022, as noted above, and there being a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Director of Elementary Education, Assam in the Elementary Education Department, as provided under Section 14 of said 2017 Act for redressal of his grievances. Such appeal shall be preferred by the petitioner forthwith along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto and copies of the letters of the DEEO, Bongaigaon under Nos. (i) Genl-84/Venture/LP-UP/2019/1365 dated 02.01.2020, (ii) Genl-118/Provn/UPS/2021/196 dated 17.02.2021 and (iii) WP(C)-1964/2021/1039 dated 22.04.2022 as well as the communication of the Director of Elementary Education, Assam under No. EPD/H/267/2021/52 dated 12.01.2023 before the said appellate authority, i.e., the Director of Elementary Education, Assam being the Chairman of the State Level Scrutiny Committee forthwith, obtaining necessary acknowledgement from the said authority in that regard.

14. In the event of filing of such appeal by the petitioner before the Director of Elementary Education, Assam being the Chairman of the State Level Scrutiny Committee, the said appellate authority after considering all the relevant materials, giving an opportunity of hearing to the petitioner shall dispose of his said appeal by a speaking order within a period of 45 (forty five) days intimating him about the outcome of the same.

15. The documents submitted by the Director of Elementary Education (DEE), Assam vide communication No. EPD/H/267/2021/52 dated 12.01.2023 that includes the letters of

the DEEO, Bongaigaon; copy of the original recommendation of the DSC, Bongaigaon; DISE data of the said Madrassa of 2009-10; appointment and joining letters of the petitioner and his mark-sheets etc., which are placed before the Court by the learned Standing counsel, Education Department, be kept as part of the record.

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

JUDGE

Comparing Assistant