

GAHC010054532023



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

Case No. : WP(C)/1482/2023

NABA KUMAR MILI
S/O- BHIMABAR MILI, R/O- LAIPULIA MIRI, P.S. AND DIST. DHEMAJI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI, PIN- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI
PIN- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
DIST. DHEMAJI
ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS

DIST. DHEMAJI
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
DHEMAJI
DIST. DHEMAJI
ASSAM

6:THE HEADMASTER
RAMPUR BALESWARI LP SCHOOL
DIST. DHEMAJI
ASSAM
PIN- 781141

Advocate for the Petitioner : MR D MEDHI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

17/03/2023

Heard Mr. P Sarma, learned counsel for the petitioner and Ms. K Das, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 5.

2. For proper adjudication of this case, the District Scrutiny Committee, Dhemaji for Elementary Education be impleaded as party respondent No. 7 in the present proceeding.

3. Mr. G Bokali, learned Government Advocate, Assam has entered appearance on behalf of the newly impleaded respondent No. 7

4. The petitioner was serving as a Headmaster of Baleswari Tribal M.E. School in the Dhemaji Education Block of District-Dhemaji.

5. After the recommendation of the District Scrutiny Committee on being approved by the State Level Selection Committee and on approval of the State Government in the Elementary Education Department, the Director of Elementary Education, Assam vide order No. EPD-16/Provn.-UP(Act 2017)/2021/1696 dated 05.02.2021 under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* amended in 2018 provincialised the service of the petitioner as a Tutor w.e.f. 01.01.2021 in Rampur Baleswari L.P. School, Dhemaji (Base School).

6. Petitioner submitted that said Baleswari Tribal M.E. School, wherein the petitioner served as a Headmaster consist of better infrastructure having three teachers and students strength of 85.

7. It is also contended by the petitioner that though he repeatedly approached the respondent authorities praying for revoking the impugned order dated 05.02.2021, but the said authority did not consider his case till date.

8. Being aggrieved the same, the petitioner has filed this writ petition on 13.03.2023 praying to set aside and quash the impugned order dated 05.02.2021 and to direct the respondent authorities to consider the petitioner's school, i.e., Baleswari Tribal M.E. School as Base school.

9. Section 14 of the 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."

10. 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".

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

12. In the event of filing such statutory appeal by the petitioner, as directed above, the Secretary in the Department of School (Elementary) Education, Assam on verification of the relevant records obtained from the concerned District Scrutiny Committee; the District Elementary Education Officer, Dhemaji; the Block Elementary Education Officer, Dhemaji and other concerned authorities, shall dispose of the said statutory appeal of the petitioner, with a reasoned order, within a period of 90 days, after giving an opportunity of hearing to both the petitioner as well as the respondents,

intimating them about the outcome of the said appeal.

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

JUDGE

Comparing Assistant