

GAHC010215232021



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

Case No. : WP(C)/2132/2021

MUKTA RAM DEKA
S/O- LT. BHABIN CH. DEKA
VILL- SARIKOT
P.O. SARIKOT
P.S. KAMALPUR
DIST.- KAMRUP (R)
PIN- 781380
ASSAM

VERSUS

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

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
KAMRUP (R) DISTRICT
PIN- 781382

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
KAMALPUR
KAMRUP (R) DISTRICT
PIN- 781380

5:THE STATE LEVEL HIGH POWER COMMITTEE
REP. BY THE SENIOR MOST SECY. TO THE GOVT. OF ASSAM
EDUCATION DEPTT.
GHY-06

6:THE DISTRICT SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN CUM DY. COMMISSIONER
AMINGAON DISTRICT
PIN- 781380

7:PARBATI KONWAR
(ASSTT. TEACHER)
MILANJYOTI M E SCHOOL
SARIKOT
KAMALPUR BLOCK
KAMRUP (R)
PIN- 781380

Advocate for : MR. A DEKA
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-05-2023

Heard Mr. A. Deka, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.6 as well as Mr. P. Mahanta, learned counsel for the respondent No.7.

2) Matter pertains to claim for provincialisation of service of the petitioner under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended. Pursuant to the resolution dated 07.01.1995 adopted by the School Managing Committee of Milanjyoti M.E. School, 2 No. Sarikot, Kamalpur under the Kamalpur Education Block of District-Kamrup, the Headmaster-cum-Secretary of said ME School appointed the petitioner as an Assistant Teacher in the said School. Pursuant to the same, the petitioner a HSSLC (10+2) passed candidate joined his service in the said ME School on 09.01.1995 since

its venture stage.

3) The respondent No.7 was also appointed in the said ME School, who joined the said School as an Assistant Teacher in that School on 19.01.1995. However, in the website of the Director of Elementary Education, Assam, the names of Nagen Ch. Nath, Headmaster of the said ME School, Narayan Ch. Kakati, as a Science Teacher of the said School and the respondent No.7 Parboti Konwar as a Social Science Teacher of the said ME School were uploaded as eligible for the purpose of provincialisation under the said 2017 Act.

4) Section 3(1) (xi) of said 2017 Act, as amended provides 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 standards 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).

5) As the authorities concerned decided to provincialise the service of the respondent No.7 under the provisions of said 2017 Act, as amended, disregarding the better claim of the petitioner as a Social Science Teacher in said Milanjyoti ME School who is serving since 09.01.1995, being aggrieved, the petitioner has preferred this writ petition.

6) While issuing notice to the respondents, the Court by order dated 26.03.2021, in the interim directed the respondent authorities not to grant the benefit of provincialisation to the respondent No.7 until further order of the Court.

7) Being aggrieved with the said ex-parte order dated 26.03.2021, the said respondent No.7, Parboti Konwar preferred the connected Interlocutory Application, being I.A.(C) No.2332/2021 in the present proceeding for modification/alteration/vacation of the said interim order dated 26.03.2021.

8) In the present writ petition, both the respondent No.7 as well as the Director of

Elementary Education, Assam have filed their respective affidavits.

9) The respondent No.7 in her affidavit stated that since 19.01.1995 she is serving as an Assistant Teacher in the said School and in the Attendance Register of the said School from 31.12.2011, her name has been reflected at Srl. No.5 against the Subjects of English and Social Science, whereas, that of the petitioner at Srl. No.2 in the said Attendance Register has been shown against the Subject of Assamese and English, but not as a Social Science Teacher. As such, since 31.12.2011, she was teaching the Subjects of English and Social Science, her name has been rightly forwarded for the purpose of provincialisation as a Social Science Teacher in said Milanjyoti ME School.

10) The Director of Elementary Education (DEE), Assam in its affidavit relied on the provisions of Section 3(1)(xi) of the said 2017 Act, as amended in 2018 stating that for the purpose of provincialisation of any venture upper primary school under the said 2017 Act minimum of three teachers or tutors, at least one teacher each for (a) Science and Mathematics (b) Social Science and (c) Languages is required. Further, additional posts is to be considered in accordance with norms and standard stipulated in the Schedule under Section 19 of the Right to Education Act, 2009. The DEE, Assam in its affidavit also stated that in the year 2017-18 there was an enrollment of 30 students in said Milanjyoti ME School, as such, there was a requirement of only three teachers for provincialisation of their services as provided under Section 3(1) (xi) of the said 2017 Act.

11) The DEE, Assam in its affidavit also stated that the District Elementary Education Officer, Kamrup (Rural) submitted the proposal for provincialisation of services of Nagen Ch. Nath, Headmaster of said Milanjyoti ME School, Parbati Konwar, Assistant Teacher of the said School and Narayan Ch. Kakati as a Science Teacher serving in said Milanjyoti ME School since 09.01.1995, 19.01.1995 and 15.12.1999 respectively, for provincialisation of their services. Moreover, the District Scrutiny

Committee did not recommend the name of the petitioner for provincialisation of his service and as per the report of the DEEO, Kamrup the name of the respondent No.7 as a Science Teacher was forwarded along with two other teachers, named above, for provincialisation by the State Level Scrutiny Committee, which was accordingly forwarded for provincialisation against said Milanjyoti ME School as Tutors. After receiving posts sanctioned order from the Government, the DEE, Assam issued the order of provincialisation of service of the respondent No.7 along with other two teachers on 05.02.2021.

12) In the connected I.A.(C) No.2332/2021 that was preferred by the respondent No.7 for modification/alteration/vacation of the ex-parte interim order dated 26.03.2021, the writ petitioner Mukta Ram Deka, as opposite party No.7 filed his reply, wherein, the DISE data of said Milanjyoti ME School since the year 2010-11, 2013-14, 2014-15, 2017-18 and 2019-20 have been annexed and in all those DISE data, the name of the petitioner was shown as an Environmental Studies Teacher and that of Nagen Ch. Nath, Headmaster of said School as Language Teacher, Narayan Ch. Kakati as a Mathematics Teacher and respondent No.7 Pabati Konwar as a Science Teacher.

13) The Court in said I.A.(C) No. 2332/2021, by order dated 01.02.2023 directed the learned counsel for the respondents in the Elementary Education Department to obtain the opinion of the Head of the Department of Environmental Studies and Social Studies of Gauhati University with regard to whether Environmental Studies and/or Social Studies is a part of Social Science Subject or not.

14) During the deliberation of the matter, Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education has placed a copy of the opinion issued by the Head of the Department of Environmental Science, Gauhati University clarifying that Environmental Science is completely a Science Subject and that though Social Science can be treated as a small part of Environmental Science but not the vice-versa.

15) 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.”

16) 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.”

17) As there is a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Secretary, Department of School Education (Elementary), Education, Assam as provided under Section 14 of said 2017 Act, as amended, on or before **25.05.2023** for redressal of his grievances along with a certified copy of this order; a copy of this writ petition including the Annexures appended thereto; a copy of the connected I.A.(C) No. 2332/2021 filed by the respondent No.7 including the Annexures appended thereto and affidavits filed by the opposite parties therein and a copy of the opinion of the Head of Department of Environmental Science, Gauhati University, obtaining necessary acknowledgement from the said authority in that regard.

18) In the event of filing of such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam as directed above, within the time so specified, the said authority after considering all the relevant materials including the DISE data of said Milanjyoti ME School and other relevant documents and after giving an opportunity of hearing to the petitioner as well as the respondent No.7, shall dispose of the said appeal of the petitioner within a period of ninety days

from the date of its receipt by a reasoned order intimating him about the outcome of his said appeal.

19) Failure on the part of the petitioner to prefer the appeal before the authority within the time so specified, as directed above, the respondent No.7 shall be given the benefit of provincialisation of her service w.e.f., the date of provincialisation of her service.

20) However, in the event of filing of such appeal by the petitioner before the authority concerned within the time so specified, only after disposal of the appeal, the benefit of provincialisation under the said 2017 Act shall be given to the person concerned, either the petitioner or the respondent No.7, whom the appellate authority found to be eligible for provincialisation under the said 2017 Act.

21) With the above observation and direction, this writ petitions stands disposed of.

JUDGE

Comparing Assistant