

GAHC010058522022



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

Case No. : WP(C)/2255/2022

SHAH ALOM BARBHUIYA
S/O- ALA UDDIN BARBHUIYA, RESIDENT OF VILLAGE- KUCHILA, P.O.
KUCHILA BAZAR, DISTRICT- HAILAKANDI, ASSAM, PIN- 788155.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPTT., DISPUR, GHY.-06.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM
PIN- 788151.

4:THE DISTRICT SCRUTINY COMMITTEE
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM
PIN 788151 (REPRESENTED BY ITS CHAIRMAN).

5:THE STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION

ASSAM
DISPUR
GUWAHATI-6 (REPRESENTED BY ITS CHAIRMAN
DIRECTOR OF ELEMENTARY EDUCATION
ASSAM).

6:THE DISTRICT MISSION COORDINATOR
SSA MISSION
HAILAKANDI
P.O. AND DIST. HAILAKANDI
ASSAM
PIN- 788151.

7:THE MISSION DIRECTOR
SSA MISSION
ASSAM
KAHILIPARA
GHY.-19.

8:THE HEADMASTER
POLLYMONGAL BORBOND M.E. MADRASSA
P.O. BORBOND
DIST.- HAILAKANDI
ASSAM
PIN- 788164

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date : 14.12.2023

ORDER

Heard Mr. F. U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned standing counsel, Elementary Education Department, Government of Assam; Ms. P. Das, learned standing counsel, SSA, Assam; and Mr. M. Hussain, learned counsel; appearing on behalf of their respective respondents.

2. The petitioner is aggrieved by an order, dated 18.02.2022 issued by the Director, Elementary Education Department, Government of Assam, by which, his case for provincialization of his services was rejected basing on a report from the Joint Committee constituted by the Government. The ground as taken, is that the name of the petitioner did not figure in the DISE Data for the period 2006-07 to 2011-12.

The petitioner, as per the case projected in the writ petition, contended that he was initially appointed as Assistant Teacher of “Pollymangal Borbond M.E. Madrassa” on 01.07.1998 and thereafter, he continued to serve in the same school. The case of the petitioner as well as other incumbents in the said school was taken-up for consideration for provincialization of their services as per the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The District Level Scrutiny Committee(DLSC) having favourably recommended the name of the petitioner; the matter came to be placed before the State Level Scrutiny Committee(SLSC) which also, on scrutiny, recommended the

name of the petitioner and the Government notified his name for provincialization of his services. Consequently, the Director, Elementary Education Department, Government of Assam, vide order, dated 05.02.2021, provincialized the services of the petitioner as Tutor(Science). The petitioner was thereafter directed to appear in an inquiry vide communication, dated 20.09.2021. It is contended that the inquiry as proposed, was without jurisdiction but in terms of the directions passed by this Court vide order, dated 24.09.2021, in WP(c)3832/2021, the petitioner participated in the inquiry.

3. Mr. Barbhuiya, learned counsel for the petitioner, has submitted that the documents on record would reveal that the petitioner was working in the said school since the date of his initial appointment i.e. 01.07.1998. The learned counsel has further submitted that in terms of the provisions of the said Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, it is the District Level Scrutiny Committee(DLSC) as well as the State Level Scrutiny Committee(SLSC) who are empowered to examine the proposals for provincialization of the service of the eligible teachers of venture schools. The said two authorities have favourably considered the case of the petitioner and the recommendations made in his favour having ultimately culminated in the order of provincialization, dated 05.02.2021; as such, the said order could not have been reviewed subsequently by the authorities.

Mr. Barbhuiya, learned counsel for the petitioner, by referring to the impugned order, dated 18.02.2022, issued by the Director, Elementary Education Department, Government of Assam, has submitted that the same is based on a recommendation of a Joint Committee which body is not contemplated under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational

Institutions) Act, 2017, and as such, the recommendations so made are clearly without jurisdiction.

4. Per contra, Mr. Pegu, learned standing counsel, Elementary Education Department, has submitted that even if it is held that the Joint Committee is not an authority prescribed under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, but the facts coming on record in its report, have to be given some credence and the said facts raise a doubt as to the presence of the petitioner in the school in question, prior to 2012-13.

Accordingly, Mr. Pegu, learned standing counsel, Elementary Education Department, has submitted that the impugned order, dated 18.02.2022, issued by the Director, Elementary Education Department, Government of Assam, requires no interference and the same is to be maintained.

5. I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

6. It is an admitted fact that the case of the petitioner after being favourably recommended by the jurisdictional District Level Scrutiny Committee(DLSC) was also recommended by the State Level Scrutiny Committee(SLSC) and thereafter, the Government after having approved such recommendation, the Director, Elementary Education Department, Government of Assam, had passed the order, dated 05.02.2021, provincializing the services of the petitioner. However, subsequently, on a doubt arising

as to the correctness of the said provincialization exercise made, an inquiry was ordered and the petitioner was directed to participate therein. This Court, vide order, dated 24.09.2021, passed in WP(c)3832/2021 had also required the petitioner to participate in such inquiry and the authorities to take decision based thereon. As such, the inquiry held cannot be questioned. However, the manner and method of conducting the inquiry basing on the materials on record, can be examined by this Court.

7. The issue involved in the present proceeding is as to whether the impugned order, dated 18.02.2022, and the basis of passing the same, is valid and was done strictly applying the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

8. In terms of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the cases of eligible employees are required to be considered first by the District Level Scrutiny Committee(DLSC) which Committee shall upon scrutinization, shall prepare a list of all venture schools within the District eligible in terms of the provisions of the said Act of 2017 and thereafter, proceed to scrutinize and verify the service records of all serving teachers who are eligible or would become eligible for consideration for provincialization of their services. The District Level Scrutiny Committee(DLSC) would also identify a Base School for each category of school and recommend the name of the teacher/tutor to be associated against each Base school. Thereafter, the District Level Scrutiny Committee(DLSC) shall forward the verified list of eligible teachers Base-school wise in accordance with the Act of 2017, to the concerned Director who shall place the matter before the State Level Scrutiny Committee(SLSC) to be constituted

under Section 13(10) of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017. The State Level Scrutiny Committee(SLSC) after proper scrutiny, as may be required, shall forward the same to for the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and teachers eligible for provincialization of their services.

It may be mentioned here that in terms of Section 13(11), the State Level Scrutiny Committee(SLSC) is also mandated to cause physical verification of all institutions along with the inspection of documents and records produced before it and is also empowered to call for such further records as may be required for causing such a verification.

Having noticed the manner in which the processing of the cases of the eligible teachers working in the venture schools for provincialization of their services is to be done; the procedure adopted for provincialization of the services of the petitioner herein, is hereby examined.

The cases of the petitioner was duly recommended by the jurisdictional District Level Scrutiny Committee (DLSC) and the same was forwarded to the Director, Elementary Education Department, for further processing. It is the contention of the petitioner that his case were placed before the State Level Scrutiny Committee(SLSC) and the State Level Scrutiny Committee(SLSC) had favourably recommended in their favour.

However, it is noticed that the cases of the petitioner was then placed before the Joint Committee constituted vide Government Notification, dated 18.03.2019. The said Joint Committee held on 24.07.2020 directed the Mission Director, Samagra Shiksha, to verify the following related parameters:

- “a) Whether the name of School appear in DISE data(maintained by NUEPA New Delhi) of 2009 or before.*
- b) Whether the name of incumbent appear in the DISE data of 2011 and afterwards.*
- c) Enrolment position of the school during 2016-17 and 2017-18.”*

The concept of examination by a Joint Committee is not provided for in the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the said Act mandates only a two-tier consideration i.e. by the District Level Scrutiny Committee(DLSC) and thereafter, by the State Level Scrutiny Committee(SLSC). The said Joint Committee not being an authority prescribed under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the conclusions arrived at by the Joint Committee are clearly conclusions without jurisdiction and the same cannot undermine the rights of the petitioner for provincialization which rights are to be considered and concluded by the District Level Scrutiny Committee(DLSC) and the State Level Scrutiny Committee(SLSC) only. Even if it is held that the Joint Committee has the jurisdiction to examine the proposals and provincialization of the services of the teachers under the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017; the data examined i.e. DISE Data from 2011 and afterwards and the enrollment position of the school during 2016-17 and 2017-18 is clearly contrary to the requirements in this connection as made in the said Act of 2017. The provisions of Section 3(xii) of the Assam Education

(Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, requires that the enrollment in a particular school shall be verified with the data as per the DISE Code 2009-10 or before. There is no requirement under the said Act to have a verification of the DISE Code after 2009-10 for the purpose of ascertaining the enrollment status of students in the school. Further, the DISE Code indicating the presence of the employee in the institution concerned is to be also verified from the DISE Data maintained with regard to the school in question, up to the year 2009-10 and prior to that.

In that view of the matter; the prescriptions made by the Joint Committee in its meeting held on 24.07.2020 is clearly contrary to the requirements made in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and the same is of no substance. The rights of the petitioners could not have been determined basing on such conclusions reached by a body not contemplated under the said Act and also basing on parameters foreign to the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

9. Having noticed the fact that the recommendations of the Joint Committee was made without jurisdiction, and also the same was not made within the parameters as mandated in the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the decision arrived at its meeting on 24.07.2020 in respect of the petitioner, stands interfered with. Consequently, the order, dated 18.02.2022, based solely on the decision of the said Joint Committee in its meeting held on 24.07.2020 also, cannot sustain and the same is also interfered with.

Having interfered with the order, dated 18.02.2022, brings this Court to consider as to the relief, the petitioner is entitled to. Although it is also seen that the petitioner's service was provincialized on 05.02.2021 but the same was subsequently cancelled. The exercise of the Joint Committee although held to be without jurisdiction by this Court but the facts that were brought on record by the Committee cannot be ignored by this Court and more so, when it has been brought to the notice of this Court by the authorities of the SSA, Assam, that the name of the petitioner admittedly did not figure in the DISE Code of 2008-09 to 2011-12. A doubt arises as to whether the petitioner existed in the said school prior to the year 2012-13. This more particularly when viewed in the context of the recommendation available on record of the Headmaster of the school in question, for preparation of the DISE Data of 2011-12 wherein, the petitioner's name was proposed for entry as a new staff. As such, a determinative conclusion is required to be arrived in this matter. The said determination would require both documentary and oral evidences which this Court would not like to venture into.

10. In view of the said position, the Director, Elementary Education Department, Government of Assam, is required to place the case of the petitioner before the State Level Scrutiny Committee(SLSC) which authority would now reconsider the case of the petitioner strictly within the parameters of the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, and for determining the question as to whether the petitioner was working in the said school prior to 2013-14.

The State Level Scrutiny Committee(SLSC) would exercise its power under Section 13(11) of the Assam Education (Provincialization of Services of Teachers and Re-

organization of Educational Institutions) Act, 2017, and cause a physical verification of the said school along with the inspection of documents and records produced before it and shall seek such further records as may be required for causing such a verification. The petitioner shall also submit the requisite documents as may be asked by the authority. The authority upon collection of such evidences and hearing the authorities of the Samagra Shiksha, Assam, would come to the conclusion as to whether the petitioner was working in the said school prior to 2013-14 and if so, from which date.

11. The conclusions that may be arrived at in the matter, shall be reduced in the form of a speaking order and the same be served to the petitioner by the Director, Elementary Education Department, Government of Assam, immediately on conclusion of the proceedings of the State Level Scrutiny Committee(SLSC) becoming available. Basing on the findings of the State Level Scrutiny Committee(SLSC), the provincialization of the services of the petitioner shall be considered and the order, dated 05.02.2021, shall stand revived if the said authority concludes in favour of the petitioner. However, till such conclusion is arrived at by the authority concerned and is approved by the Government as is required under the provisions of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the order, dated 18.02.2022, shall remain suspended i.e. the petitioner shall not be permitted to receive any benefits pursuant to the order, dated 05.02.2021.

12. It is made clear that the suspension of the order, dated 18.02.2022, is subject to the findings of the State Level Scrutiny Committee(SLSC) and the Government in connection the inquiry directed to be conducted herein.

Such proceeding shall be initiated and expeditiously concluded by the Director, Elementary Education Department, Government of Assam, within a period of 4(four) months from the date of receipt of a certified copy of this order.

13. With the above directions, the writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant