

GAHC010059852022



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

Case No. : WP(C)/2355/2022

NUPUR DAS AND ANR
S/O-LT. SUBAL DAS, R/O- SAPATGRAM LAXMI BHANDAR, WARD NO. 4,
P.O. AND P.S. SAPATGRAM, DIST. DHUBRI, ASSAM.

2: KANU SAHA
S/O- LT. BIJOY GOBINDA SAHA
R/O- SAPATGRAM LAXMI BHANDAR
WARD NO. 4
P.O. AND P.S. SAPATGRAM
DIST.- DHUBRI
ASSAM

VERSUS

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

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

3:THE DY. COMMISSIONER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783101.

4:THE DIST. ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA EDUCATION BLOCK
DIST.- DHUBRI
ASSAM
PIN-783301

6:SMT. ELA SAHA
ASSTT. TEACHER OF DR. N. SAHA SMRITI BIDYALAYA VLP SCHOOL
WARD NO. 4
P.O. SAPATGRAM
DIST.- DHUBRI
ASSAM. PIN-783337

7:DR. N SAHA SMRITI
VIDYALAYA VLP SCHOOL
WARD NO. 4
SAPATGRAM
DHUBRI
ASSAM.
REPRESENTED BY THE HEADMASTER OF THE SCHOOL

Advocate for the Petitioner : MR. S M SARMA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-01-2023

Heard Mr. S. M. Sarma, learned counsel for the petitioners and Mr. SMT Chistie, learned Standing Counsel, Department of School Education for the respondent Nos. 1, 2, 4 and 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.3.

The contentions of the petitioners are that the Managing Committee of Adhyapak Niranjana Saha Smriti Bidyalaya Venture L.P. School, Sapatgram, Ward No.4 in the Bilasipara Education Block of District-Dhubri during its venture stage, appointed them as its Assistant Teachers and as such, on their such

appointment, they continued to serve in that School. The petitioners also stated that the said School received financial assistance from the State Government in the Elementary Education Department.

Petitioners stated that the respondent No.6 changed the name of said Adhyapak Niranjana Saha Smriti Bidyalaya to Dr. N. Saha Smriti Bidyalaya and showed the respondent No.6 to be the working teacher of the said School and fraudulently obtained provincialisation of their services under the provisions of the *Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011* amended in 2012 during its force, depriving the petitioners not only from the provincialisation of their services, but also from the share of financial assistance granted by the State Government in the Elementary Education Department to said Adhyapak Niranjana Saha Smriti Bidyalaya.

This writ petition has been by the petitioners on 23.03.2022 praying amongst others (i) to quash the order of provincialisation of said Dr. N. Saha Smriti Bidyalaya, Sapatgram, Ward No.4 in the Bilasipara Education Block of District Dhubri as a fake School, (ii) to quash the appointment of the respondent No.6 as an Assistant Teacher of said Adhyapak Niranjana Saha Smriti Bidyalaya Venture L.P. School, Sapatgram, Ward No.4 and further (iii) to regularize and provincialise the services of the petitioners as Assistant Teachers of said Adhyapak Niranjana Saha Smriti Bidyalaya Venture L.P. School, Sapatgram, Ward No.4.

It is seen that the petitioners did not state as to when the Managing Committee of said Adhyapak Niranjana Saha Smriti Bidyalaya Venture L.P. School passed the resolution with regard to the appointment of the petitioners and also did not annex the order of provincialisation of services of Headmaster as well as respondent No.6 as Teachers of said Dr. N. Saha Smriti Bidyalaya Venture L.P.

School, Sapatgram, Ward No.4 of Dhubri District.

It is to be noted herein that a Division Bench of this Court by judgment and order dated 23.09.2016 passed in the case of *Shri Chandan Kr. Neog & Ors. -Vs- the State of Assam and Ors. (WP(C) No. 3190/2012)* declared the said 2011 Act as ultravires.

Pursuant to a Full Bench decision of this Court in the case of *Abdul Gafur Mandal and Anr. Vs State of Assam and Anr.*, reported in 2015 (2) GLT 337, the State Government in the Education Department vide Notification under No.ELC/WP(C) 2272/2013/403 dated 03.12.2015 as well as the Notification under No. ELC/WP(C)2272/2013/403/196 dated 02.06.2016 have constituted Education Tribunal in each of the districts of the State, presided by the District Judge and Addl. District Judge of the concerned district, to adjudicate the disputes of teaching and non-teaching staff as well as the disputes relating to the claim for provincialisation of such Non Government Educational Institutions in respect of teaching and non-teaching Venture Educational Institutions within their respective territorial jurisdiction from the date of issuance of the said Notifications, which was published in the Assam Gazette Extraordinary on 23.12.2015 in terms of the recommendation of this High Court.

The Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017, as amended in 2018 that pertains to provincialisation of services of the teachers of the Venture Educational Institutions and also to re-organise and streamline the Educational Institutions up to degree level in the State of Assam in its Section 19 (2) provides that - *to adjudicate disputes for redressal of grievances relating to the teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim*

for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal.

After hearing the learned counsels for the parties and considering the entire aspect of the matter, the petitioners are directed to approach the appropriate Educational Tribunal for redressal of their grievances.

In the event of any such approach by the petitioners, the concerned Education Tribunal after giving an opportunity of hearing to them as well as respondent Nos. 6 and 7, the said Tribunal shall pass necessary order in accordance with law.

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

JUDGE

Comparing Assistant