

GAHC010061162021



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

Case No. : WP(C)/2386/2021

MD NAZRUL ISLAM
ASSTT. TEACHER, MILANJYOTI M.E. MADRASSA GOSAI SOLMARI, P.O.
RANGIA, DIST. KAMRUP (R), ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (ELEMENTARY) DEPTT., DISPUR, GUWAHATI 6

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DIST. SCRUTINY COMMITTEE

REPRESENTED BY THE DEPUTY COMMISSIONER
KAMRUP (R)
ASSAM.

4:THE DIST. ELEMENTARY EDUCATION OFFICER

KAMRUP (R)
ASSAM.

5:THE HEAD MASTER

MILANJYOTI M.E. MADRASSA GOSAI SOLMARI
P.O. RANGIA
DIST. KAMRUP

ASSAM.

6:JIAUR RAHMAN

ASSTT. TEACHER
MILANJYOTI M.E. MADRASSA GOSAI SOLMARI
P.O. RANGIA
DIST. KAMRUP
ASSAM.

7:THE HEADMASTER
HIRAGATA L.P. SCHOOL
GOSAI SOLMARI
P.O. RANGIA
DIST. KAMRUP
ASSAM
PIN-781354

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

23/03/2023

Heard Mrs. R Devi, learned counsel for the petitioner. Also heard Mr. S M T Chistie, learned Standing counsel, Department of School Education for the respondent Nos. 1, 2 & 4; Mr. G Pegu, learned Government Advocate, Assam for the respondent No. 3 and Mr. P C Dey, learned counsel for the respondent No. 6.

2. It is contended by the petitioner that though he is serving in Milanjyoti M.E. Madrassa in Rangia Education Block of District-Kamrup since 01.01.1996 during its venture stage, but due to placing his documents wrongly, whereas placing the documents in favour of the respondent No. 6, who happens to be the son of the President of the School Managing Committee of said Milanjyoti M.E. Madrassa, the District Scrutiny Committee disregarding his eligibility and seniority, recommended the name of the respondent No. 6 for provincialisation, who was not in service in the said M.E. Madrassa

till 2017.

3. The petitioner has also placed before the Court that the respondent authorities in the Elementary Education Department of the State including the State Level Selection Committee without any such verification of records granted its approval for provincialisation of service of the respondent No. 6 under the provisions of the *Assam Education (Provincialisation of Services of Teacher and Re-organization of Educational Institutions) Act, 2017*.

4. Being aggrieved, the petitioner has filed this writ petition.

5. On the other hand, Mr. Dey, learned counsel for the respondent No. 6 submitted that he is serving in the said M.E. Madrassa since 01.01.2021 and his name was duly recorded in the DISE data for the year 2016-2017.

6. It is also placed on behalf of the respondent No. 6 that all the teachers of the said M.E. Madrassa used to teach all subjects to the students of the said Madrassa and therefore, the respondent authorities rightly considered his case for provincialisation and accordingly, the Director of Elementary Education (DEE), Assam by its order dated 05.02.2021 provincialised his service as a Tutor w.e.f. 01.01.2021 under the provisions of the said 2017 Act and attached him in the Base School, namely, Hiragata Lower Primary School in the District of Kamrup under the Block Elementary Education Officer, Rangia.

7. Pursuant to the order of the Court dated 07.06.2022, the petitioner has impleaded the Headmaster of Hiragata L.P. School as party respondent No. 7 in the present proceeding.

8. During the deliberation of the matter, Mrs. Devi, learned counsel for the petitioner brought to the notice of the Court that the then DEE, Assam vide its communication No.EPD.41/2013/132 dated 20.01.2016 (Annexure-H to this petition) forwarded the proposal of the District Elementary Education Officer, Kamrup to the Commissioner & Secretary, Govt. of Assam in the Elementary Education Department for provincialisation of services of Harej Ali as Headmaster with Rekibuddin Ahmed, the petitioner as Assistant Teacher, Eakub Ali as Hindi Teacher, Mattakinar Rahman as Science Teacher, Abyda Begum as Arabic Teacher and Chandmohammad as Grade-IV specifying the list of Milanjyoti M.E. Madrassa under Rangia Education Block stating further that the District Scrutiny Committee had recommended with resolution in its meeting held on 17.10.2015 for modification in respect of Headmaster and Assistant Teacher with proper justification and that said Milanjyoti M.E. Madrassa was recognized on 01.01.2005 under the Rangia Education Block for which particulars have already been

submitted to the Government for provincialisation of services of teaching and non-teaching staff vide letter of the DEE, Assam under No. EPD.99/2013/Pt/14 dated 13.07.2014.

9. By placing the said communication of the DEE, Assam dated 20.01.2016, it is submitted on behalf of the petitioner before the Court that the said letter does not contain the name of the respondent No. 6 even in the years 2015 and 2016 for provincialisation of his service while the *Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2011* was in force.

10. Though, the learned counsel for the respondent Department submitted that the petitioner has disputed the facts regarding provincialisation of service of the respondent No. 6 during the non-availability of the school even in 2016, therefore, such disputed facts cannot be entertained in the writ petition.

11. Though, notice in this case was issued on 01.04.2021, but neither the respondents in the Elementary Education Department nor the District Scrutiny Committee, Kamrup and the private respondent No. 6 could place anything against the letter of the DEE, Assam dated 20.01.2016, noted above.

12. This documentary evidence of the letter dated 20.01.2016 of the DEE, Assam as well as the letter dated 13.07.2014 mentioned in the said letter dated 20.01.2016 however remained un-objected at any point of time neither by the respondents in the Elementary Education Department of the State nor by the respondent No. 6.

13. It is also stated that said Milanjyoti M.E. Madrassa has now been amalgamated with Hiragata Lower Primary School under Rangia Education Block of Kamrup District in which the respondent No. 6 as well as said Rekibuddin Ahmed, who was the Headmaster of said Milanjyoti M.E. Madrassa at the time of provincialisation of the said Madrassa are serving as Assistant Teachers.

14. 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."

15. 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".

16. 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.

17. 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 shall dispose of the said statutory appeal of the petitioner, with a reasoned order, within a period of 90 days, on due verification of records, after giving an opportunity of hearing to both the petitioner as well as the respondent No. 6 and the Headmaster of said Milanjyoti M.E. Madrassa, District-Kamrup, intimating them about the outcome of the said appeal.

18. However, in the event, the petitioner is found to be eligible for provincialisation following the provisions of the said 2017 Act, the respondent authorities shall provincialise his service from the date of provincialisation of the other teachers of the said Milanjyoti M.E. Madrassa, District-Kamrup, giving him all such financial and other service benefits, as applicable under the law.

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

JUDGE

Comparing Assistant