

GAHC010072532022



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

Case No. : WP(C)/2672/2022

NANDA PATHARI
S/O- LT. DIBYADHAR PATHARI, R/O- VILL. GULUNG TEMERE, P.O.
BADULIPUR, P.S. DERAGAON, DIST.- GOLAGHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY ITS SECY., DEPTT. OF ELEMENTARY EDUCATION, DISPUR,
GUWAHATI-6.

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

3:THE DIST. ELEMENTARY EDUCATION OFFICER
GOLAGHAT
ASSAM
PIN- 785621.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOLAGHAT NORTH BLOCK
ASSAM
PIN- 785614.

5:DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
REP. BY ITS CHAIRMAN
GOLAGHAT DIST.
O/O. THE DY. COMMISSIONER
GOLAGHAT
ASSAM
PIN- 785621.

6:BIMAL CHANDRA PATHARI
ASSTT. TEACHER
DISOI PORIA JANAJATI M.E. SCHOOL
GOLAGHAT

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

17/02/2023

Heard Ms. C Barman, learned counsel for the petitioner. Also heard Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 4, Mr. G Pegu, learned Government Advocate, Assam for the respondent No. 5 and Mr. P Bordoloi, learned counsel for the respondent No. 6.

It is submitted by the petitioner that the Managing Committee of Disoi Poria Janajati M.E. School in the Central Education Block of District-Golaghat during its venture stage appointed him as an Assistant Teacher in the said school and since then, he is serving in it and the respondent No. 6 was appointed as a Language Teacher in the said school in September, 2003.

While considering the case of the teaching and non-teaching staff of said Disoi Poria Janajati M.E. School in the Central Education Block of District-Golaghat for provincialisation under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* amended in 2018, the authorities concerned disregarding his better claim and seniority provincialised the service of the respondent No. 6, Assistant Teacher of said school as a Language Teacher along with two others, namely, Arup Chandra Loying Headmaster of the said school and Torun Chandra Loying Assistant Teacher of Science.

Being aggrieved, the petitioner has filed this writ petition on 07.04.2022 praying for a direction to set aside and quash the provincialisation of the respondent No. 6 and to provincialise his

service as Language Teacher in said M.E. School.

Petitioner admitted the fact that Section 3(1)(xi) of said 2017 Act provides that 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 and that the petitioner was the Language Teacher in the said school.

During the deliberation of the matter, Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education, on instructions apprised the Court that the District Scrutiny Committee (Elementary), Golaghat vide resolution dated 21.12.2017 recommended the names of Arup Chandra Loying, Torun Chandra Loying and Bimal Chandra Pathari for provincialisation of their services under the said 2017 Act, served as Teachers in said Disoi Poria Janajati M.E. School in the District of Golaghat and it was approved by the concerned State Level Scrutiny Committee.

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."

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".

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 **on or before 15.03.2023** 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.

In the event of filing such statutory appeal by the petitioner within the time so specified, 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, Golaghat; Block Elementary Education Officer, Golaghat 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 respondent No. 6 and the Headmaster of said Disoi Poria Janajati M.E. School, Golaghat, intimating them about the outcome of the said appeal.

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 Disoi Poria Janajati M.E. School, District-Golaghat, giving him all such financial and other service benefits as applicable under the law.

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

JUDGE

Comparing Assistant