

GAHC010073732021



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

Case No. : WP(C)/3141/2021

NIRUMAI MUDOI
W/O SRI RAJEN SAIKIA, R/O VILL. MUDOICHUK, P.O. MAJULI BONGAON,
DIST. MAJULI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. DEPTT. OF
ELEMENTARY EDUCATION, GOVT. OF ASSAM, DISPUR, GHY 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GHY 19
KAMRUP (M)
ASSAM.

3:THE DIST. SCRUTINY COMMITTEE

MAJULI/JORHAT DIST. REPRESENTED BY DEPUTY COMMISSIONER
MAJULI/JORHAT. DIST.

4:THE DIST. ELEMENTARY EDUCATION OFFICER

MAJULI/JORHAT
DIST.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

MAJULI BLOCK
MAJULI DIST.

6:SISU RAM BONIA

TUTOR
DR. AMBEDKAR M.E. SCHOOL
VILL. MUDOICHUK
P.O. MAJULI BONGAON
DIST. MAJULI
ASSAM.

7:BADAN KALITA

TUTOR
DR. AMBEDKAR M.E. SCHOOL
VILL. MUDOICHUK
P.O.MAJULI BONGAON
DIST. MAJULI
ASSAM

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

10.05.2023

Heard Mr. B.K. Das, learned counsel for the petitioner and Mr. B. Kaushik, learned counsel for the respondents No. 1, 2, 4 and 5. Also heard Ms. D.D. Barman, learned counsel for the respondent No. 3 and Mr. A. Deka, learned counsel for the private-respondent No. 7. None appears for the private respondent No. 6.

2. This writ petition is filed by the petitioner aggrieved by the non-provincialization of her services. The petitioner was appointed as an Assistant Teacher by the School Managing Committee of Dr. Ambedkar M.E. School by appointment order dated 05.01.1992. The petitioner has been rendering her services since then. Her name is also incorporated in the District Information

System for Education (DISE) on 30.09.2023 for the Academic Year 2009-10. In terms of the provisions of Assam Education (Provincialization) of Services of Teachers Act 2017, the process for provincialization of the Teachers in terms of the pattern or schedule indicated in the Act, the proposal to that effect was sent by the Head Master. The name of the petitioner was reflected as a Teacher for the subject of Social Studies and the names of the respondents No. 6 & 7 were reflected as Teachers for English and Hindi respectively. The learned counsel for the petitioner submits that the petitioner is aggrieved by the fact that the proposal put up by the Head Master was on the basis of the records available and there is no dispute with regard to the particulars entered in the proposal in respect of the candidates including the petitioner. However, the Government by the subsequent orders passed, the services of respondents No. 6 & 7 have been provincialised, whereas petitioner was left out. It is the submission of the learned counsel for the petitioner that Social Studies is an essential subject under the provisions of Section 3(1)(XI) of the Act of 2017. It is the prescription under the Act to provincialise three teachers namely one for Language, one for Science or Maths or one for Social Studies. The learned counsel for the petitioner submits that inspite of such a mandate, the services of the petitioner has not been considered for provincialization without any rhyme or reason. A representation was preferred before the Director, Elementary Education dated 06.02.2021 which according to the petitioner remained unattended.

3. Mr. B. Kaushik, learned counsel for the respondents No. 1, 2, 4 and 5 and Mr. A. Deka, learned counsel for the private-respondent No. 7 have vehemently opposed the contentions of the learned counsel for the petitioner and submit that there is an adequate provision under the statute for efficacious and alternative remedy under Section 14.

4. Mr. B. Kaushik, learned counsel, has submitted that under Clause-14, there is

an appellate authority against which the petitioner could have approached.

5. Mr. A. Deka, learned counsel for the respondent No. 7 also relies on the submissions made and submits that the petition be dismissed on the ground of having alternative remedy.

6. Mr. B.K. Das, learned counsel for the petitioner submits that the alternative remedy cannot be absolute bar and therefore, the petition be decided on the merits.

7. The learned counsels for the parties have been heard. Pleadings on records have been perused. It is evident that the provisions of 2017 Act, there is a statutory provision for preferring an appeal to the appellate authority.

8. The grievance of the petitioner is that under the prescription of the Act, Social Science is one of the subject for which, a teacher is required to be provincialized. The petitioner has been appointed in the School and claims to be presently a Teacher of Social Studies under the Dr. Ambedkar M.E. School. Though Notices were issued as far back as 15.07.2021, no counter-affidavit has been filed disputing the claims of the petitioner. The petitioner on the other hand has also not been able to substantiate his arguments with relevant documents to suggest that the non-consideration of the case of the petitioner for provincialization is a deliberate act contrary to the provisions of the Act and the Rules as well as the procedure prescribed by the Department.

9. Although, the Act prescribes alternative remedy in the form of an appellate authority, the counsels representing the parties have not been able to present any order before this Court which suggests that the DLC or SLC has rejected the case of the petitioner as per the proposal which was sent by the Head Master. The learned counsel for the petitioner has also not been able to submit as to whether the case of the petitioner was rejected by the DLC or by the SLC. Under such

circumstances, relegating the petitioner to alternative remedy may not subserve the purpose of justice.

10. Considering the claims and counter claims made by the parties before this Court, this Court is of the considered view that the writ petition can be disposed of with a direction to the Director, Elementary Education namely respondent No. 2 herein to look into the grievances of the petitioner regarding the rejection of her claim for provincialization which was proposed by the Head Master of Dr. Ambedkar M.E. School and thereafter, pass appropriate orders upon examination of all relevant records. The petitioner may also be given an opportunity of being heard before such an order is passed. The Director, Elementary Education upon consideration of all the relevant records, which may be requisitioned from the concerned school if required, passed a detailed and speaking order within a period of sixty (60) days from the date of receipt of certified copy of the order. Any such order that is passed shall be communicated to the petitioner.

11. In view of the above discussions, the writ petition is, accordingly, disposed of.

12. The interim order passed earlier will continue till 11.07.2023.

JUDGE

Comparing Assistant