

GAHC010074242021



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

Case No. : WP(C)/3271/2021

BIKASH CHANDRA BHARALI
S/O LT. THANURAM BHARALI, R/O VILL. CHILAKOLA GAON, P.O.
BALICHAPORI MAJULI, BLOCK KAMALABARI, DIST. MAJULI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY DEPP. OF ELEMENTARY
EDUCATION GOVT. OF ASSAM, DISPUR, GHY-06

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

3:THE DISTRICT SCRUTINY COMMITTEE MAJULI/JORHAT DIST.
REP. BY DEPUTY COMMISSIONER
MAJULI/JORHAT
DIST.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MAJULI / JORHAT DIST.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
MAJULI BLOCK
DIST. MAJULI

6:BIPUL BARAH
HEAD MASTER CHILAKOLA SC M.E. SCHOOL
VILL. CHILAKOLA GAON
P.O. BALICHAPORI MAJULI
BLOCK KAMALABARI
DIST. MAJULI
ASSAM

7:ANIMA SAIKIA
TUTOR
CHILAKOLA SC M.E. SCHOOL
VILL. CHILAKOLA GAON P.O. BALICHAPORI MAJULI
BLOCK KAMALABARI
DIST. MAJULI
ASSA

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

20.02.2023.

Heard Mr. B K Das, learned counsel for the petitioner and Mr. A Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4 & 5. Also heard Mr. G Pegu, learned Government Advocate, Assam for the respondent No. 3 as well as Mr. F K R Ahmed, learned counsel appearing for the respondent Nos. 6 & 7.

The petitioner, the respondent No. 6 and the respondent No. 7 were appointed as Assistant Teachers in Chilakola SC M.E. School, Chilakola in the Kamalabari Education Block of District-Majuli during its venture stage.

The petitioner joined his service in the said school on 06.05.1985 and taught English and Assamese to the students of the said school. The respondent No. 6, Headmaster of the said school joined his service on 04.05.1985 and taught English as well as Arts to its students, whereas the respondent No. 7, Hindi teacher joined the said school on 25.06.1988.

The said Chilakola SC M.E. School, Majuli also has one Syam Kumar Das, Science Teacher teaching Mathematics and Science and one Apurba Chaudhury who used to teach Social Science to the students of the said school.

The petitioner is aggrieved as the respondent authorities without considering his case and disregarding his seniority, considered the case of the respondent Nos. 6 & 7 along with said Shyam Kumar Das for provincialisation of their services under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended in 2018.

Both the respondent Nos. 6 & 7 submitted that they are Language Teachers of the said school, whereas the respondent No. 6 used to teach English and the respondent No. 7 used to teach Hindi to the students of the said school.

On being enquired and on instruction, Mr. Phukan, Standing counsel, Department of School (Elementary) Education placed a communication of the Director of Elementary Education, Assam dated 05.01.2023 along with the recommendation of the District Scrutiny Committee (Elementary), Majuli, whereby the said committee recommended the names of the respondent No. 6, Headmaster of the said school teaching English, the respondent No. 7 teaching Hindi and said Shyam Kumar Das teaching Science to the students, for their provincialisation under the provisions of the said 2017 Act, holding the petitioner who used to teach Social Science and Apurba Chaudhury who used to teach Assamese not eligible for provincialisation as Teacher/Tutor due to non-availability of required enrollment.

It is submitted that on the basis of the recommendation of the District Scrutiny Committee (Elementary), Majuli the State Level Scrutiny Committee recommended the respondent Nos. 6 & 7 for their provincialisation, pursuant to which they were appointed as Tutors in the said school.

Section 3 (1) (xi) of the said 2017 Act provides as follows-

“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:

Provided that for additional posts it shall be considered in accordance with the norms and standard stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009

(Central Act No. 35 of 2009)."

The recommendation of the District Scrutiny Committee (Elementary), Majuli placed before the Court by the Director of Elementary Education, Assam clearly reflects that the petitioner used to teach Social Science, whereas the respondent No. 6 used to teach English and the respondent No. 7 used to teach Hindi to the students of the said school.

As per the said provision of Section 3 (1) (xi) of the said 2017 Act, noted above, only one Language Teacher can be provincialised and the petitioner has been left out from provincialisation, though he is a Social Science Teacher of the said school.

Section 14 of said 2017 Act provides for 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 have 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 aspect of the matter, the petitioner is directed to prefer a statutory appeal before the Secretary to the Department of School (Elementary) Education, Assam 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, as directed above, the Secretary to 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 (ninety) days from the date of receipt of the said appeal, after giving an opportunity of hearing to the petitioner, the respondent Nos. 6 & 7, 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 the service of the petitioner from the date of provincialisation of the other teachers of the said Chilakola SC M.E. School, Majuli, giving him all such financial and other service benefits as applicable under the law and the provisions of said 2017 Act.

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

Copy of the communication dated 05.01.2023 along with the relevant documents issued by the Director of Elementary Education, Assam including the recommendation of the District Scrutiny Committee (Elementary), Majuli be kept as part of the records.

JUDGE

Comparing Assistant