

GAHC010077642021



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

Case No. : WP(C)/3850/2021

JATINDRA ROY @ JATINDRA RAY
S/O LATE SOSHI MOHAN DAS, VILL-BOGULAMARI, P.O.-BALAPET VIA
SORBHOG, P.S.-SORBHOG, DIST-BARPETA (ASSAM), PIN-781317

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
CUM CHAIRMAN
STATE LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
BONGAIGAON
REPRESENTED BY ITS CHAIRMAN CUM THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
PIN-783390

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON DISTRICT
BONGAIGAON
DIST-BONGAIGAON
ASSAM
PIN-783390

5:RUP KUMAR NATH
S/O LATE SAHADEV NATH
VILL-CHAKIHALI
P.O.-CHAKIHALI
P.S.-MANIKPUR
DIST-BONGAIGAON (ASSAM)
PIN-783392

6:ANITA NATH
D/O LATE KAMESWAR NATH
VILL-CHAKIHALI
P.O.-CHAKIHALI
P.S.-MANIKPUR
DIST-BONGAIGAON (ASSAM)
PIN-78339

Advocate for the Petitioner : MR. K R PATGIRI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

21/03/2023

Heard Mr. K R Patgiri, learned counsel for the petitioner. Also heard Mr. P K Bora, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1, 2 & 4; Ms. T Hazarika, learned Government Advocate, Assam for the respondent No. 3; Mr. A Hussain, learned counsel for the respondent No. 5 and Mr. A Mobarague, learned counsel for the respondent No. 6.

2. Mr. A Mobarague, learned counsel for the respondent No. 6, on instructions submitted that though the respondent authorities provincialised her service as a Tutor, but after her such provincialisation on 05.02.2021, she resigned from her service on 11.08.2022.

3. From the recommendation of the District Scrutiny Committee, Bongaigaon annexed to this petition, it is seen that the respondent No. 5 was the Headmaster of Abadi Bala M.E. School under Manikpur Education Block of District-Bongaigaon, who used to teach English, whereas the respondent No. 6 was a Hindi Language Teacher and one Azizul Rahman used to teach Mathematics and Science to the students of the said school during its venture stage.

4. Though, the petitioner is a Social Science Teacher, the District Scrutiny Committee, Bongaigaon did not recommend his name for provincialisation and accordingly, on the recommendation of the State Level Scrutiny Committee, the services of the respondent Nos. 5 & 6 and said Azizul Rahman were provincialised under the provisions of the *Assam Education (Provincialisation of Services of Teacher and Re-organization of Educational Institutions) Act, 2017*.

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

6. The Court by order dated 23.08.2021 stayed the provincialisation of both the respondent Nos. 5 and 6 until further orders observing that the benefits given to them cannot take away the legal rights of the petitioner to be provincialised as a Social Science Teacher.

7. Though, the respondent Nos. 5 and 6 earlier filed Interlocutory Applications being I.A. (Civil) No. 137/2022 and I.A. (Civil) No. 613/2022, respectively for modification/alteration/vacation of said interim order dated 23.08.2021 passed in the present proceeding, but the Court after hearing the matter by a common order dated 18.04.2022 rejected those two Interlocutory Applications preferred by the respondent Nos. 5 and 6.

8. During the pendency of this writ petition, the authorities in the Directorate of Elementary Education, Assam through a committee consisting of the Deputy Director, Elementary Education, Assam; the Inspecting Auditor in the office of the Director of Elementary Education, Assam and the Research Assistant in the office of the Director of Elementary Education, Assam submitted a report on the basis of which it found that the petitioner is entitled for provincialisation of his service under the provisions of said 2017 Act.

9. Thereafter, on submission of such report, the State Level Scrutiny Committee in its meeting held on 12.12.2022 reconsidered the matter regarding provincialisation of service of the petitioner being an Assistant Teacher of Abadi Bala M.E. School and accordingly, recommended his name for provincialisation of his service against said Abadi Bala M.E. School with a report to the Government giving the detail facts stating his entitlement under Section 3(1)(xi) of the said 2017 Act.

10. Due to non-availability of the Member of the State Level Scrutiny Committee in the Elementary Education Department under the provisions of said 2017 Act, the said decision dated 12.12.2022 could not be forwarded to the Government.

11. Pursuant to the order of the Court dated 17.02.2023, Mr. Bora, learned Standing counsel,

Department of School (Elementary) Education placed a copy of the Notification No. E250450/4 dated 28.11.2022, whereby one Sri Ananta Kumar Gogoi, Assam Civil Services, Joint Secretary in the Department of School Education has been inducted as a Member of the State Level Scrutiny Committee (SLSC) in place of Smt. Rita Borborah, who has already completed her term.

12. In view of the above, the finding of the State Level Scrutiny Committee dated 12.12.2022 placed before the Court today by the Director of Elementary Education, Assam on re-constitution of the State Level Scrutiny Committee under the said 2017 Act as amended shall now give its final effect provincialising the service of the petitioner under the provisions of the said 2017 Act.

13. The respondents in the Elementary Education Department including the State Level Scrutiny Committee shall complete the entire process within a period of 30 (thirty) days from the date of receipt of certified copy of this order to be furnished by the petitioner before the Director of Elementary Education, Assam-cum-Chairman of said SLSC obtaining necessary acknowledgment in that regard. Thereafter, the respondent authority in the Elementary Education Department including the said SLSC (Elementary), Assam shall pass a necessary order provincialising the service of the petitioner within the said period.

14. In the event of such provincialisation of service of the petitioner, the respondent authorities shall release the salaries to the petitioner as well as respondent Nos. 5 & 6 during the time of provincialisation of their services in said Abadi Bala M.E. School as per their entitlement considering the fact that the respondent No. 6, noted above, has already resigned from service on 11.08.2022.

15. The interim order passed earlier on 23.08.2021 stands merged with this order.

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

JUDGE

Comparing Assistant