

GAHC010026402023



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

Case No. : WP(C)/4246/2021

PROMUD BORA
ASSTT. TEACHER
RAJDWAR SIMATAWARTI M.E.SCHOOL
EDUCATION BLOCK
BIHPURIA
LAKHIMPUR
ASSAM
S/O- LT. BONPAL BORA R/O- VILL- AMPARA
P.O. LALUK (LAKHANABORI)
P.S. LALUK
DIST.- LAKHIMPUR
PIN- 784160

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-6

2:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN-CUM-DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY-19
3:DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
4:NANDA BORA
VILL- TUNIJAN
BAHBARI
P.O. LALUK
DIST.- LAKHIMPUR

ASSAM
PIN- 784160
5:SANGITA BORA
W/O- NANDA BORA
VILL- TUNIJAN
BAHBARI
P.O. LALUK
DIST.- LAKHIMPUR
ASSAM
PIN- 784160
6:HARKA BAHADUR SUBBA
VILL- RANGA D RESERVE (GOLAJULI)
P.O. MERBIL
DIST.- LAKHIMPUR
ASSAM
PIN- 784160
7:AXOM SARBA SIKSHA ABHIJAN MISSION
REP. BY MISSION DIRECTOR
ASSAM
KAHILIPARA
GHY-19

Advocate for : MR. S K DAS

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

10/03/2023

Heard Mr. S K Das, learned counsel for the petitioner and Mr. P Bora, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 3. Also heard Mr. P Bordoloi, learned counsel for the respondent No. 6 and Mr. P Nayak, learned Standing counsel, SSA, Assam for the respondent No. 7.

On the approval of the State Government in the Elementary Education Department, the Director of Elementary Education, Assam vide Order No. EPD-16/ Provn.-UP(Act 2017)/2021/4500 dated 05.02.2021 provincialised the service of the respondent No. 6 as a Tutor in Rajdar

Anuhuchita L.P. School in the Bihpuria Education Block of Lakhimpur District under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* amended in 2018. Stating that disregarding his seniority and better claim and being aggrieved with it, the petitioner has preferred this writ petition.

It is submitted that after passing Higher Secondary Examination, on his approach, the Managing Committee of Rajdwar Simantawarti M.E. School during its venture stage, on 15.12.1992 appointed the petitioner as an Assistant Teacher in that school, pursuant to which he joined the said school on 01.01.1993 and since then he is rendering service on it. He stated that he obtained Diploma in Elementary Education (D.El.Ed.) from the Basic Training Center, Azad, Lakhimpur in the year 2019.

Petitioner stated that the respondent No. 6 is a Hindi Teacher, who joined the said M.E. School on 23.04.1993 later than the petitioner, during its venture stage and also obtained Diploma in Elementary Education (D.El.Ed.) in the year 2019 from the Basic Training Center, Azad, Lakhimpur.

It is submitted by the petitioner that the respondent No. 4 is the Headmaster of the said Rajdwar Simantawarti M.E. School and the respondent No. 6 is the Hindi Language Teacher of said M.E. School, where the respondent No. 4 taught English and the respondent No. 6 taught Hindi to the students of the said M. E. School. Petitioner stated that as per the provisions of Section 3(1)(xi) of the said 2017 Act, as amended in 2018, only one Language Teacher of a venture M. E. School can be provincialised. Section 3(1)(xi) of the said 2017 Act reads 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 Court while issuing notice to the respondents in the present proceeding on 02.09.2021 directed the respondent authorities not to give further effect of provincialisation to the respondent No. 6, who is junior to the respondent No. 4. Pursuant to said interim order dated 02.09.2021,

the respondent authorities vide order dated 21.03.2022 stopped the salary payable to said respondent No. 6.

It is seen from this writ petition itself that the petitioner through RTI obtained necessary information that the District Scrutiny Committee, Lakhimpur recommended the names of the respondent Nos. 4, 5 and 6 for provincialisation of their services under the provisions of said 2017 Act and that was accordingly approved by the State level Selection Committee and the same being approved by the Government, the services of the respondent Nos. 4, 5 and 6 were provincialised as "Tutors" in said Rajdar Anuhuchita L.P. School.

From the DISE data of the year 2011-2012 annexed to this petition, it can be seen that the petitioner used to teach Mathematics to its students, whereas the respondent No. 4 used to teach English and respondent No. 6 used to teach Hindi to the students of said Rajdwar Simantawarti M.E. School.

Earlier the petitioner filed an application before the State Level Scrutiny Committee represented by its Chairman-cum-Director of Elementary Education, Assam on 13.04.2021 against the impugned provincialisation order dated 05.02.2021 of the respondent No. 6.

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."

From the above, it can be seen that the Director of Elementary Education is not the concerned Appellate Authority under the said Section 14 of 2017 Act once the State Government gives its approval to any such recommendation of the State Level Scrutiny Committee approving the recommendation of the concerned District Scrutiny Committee.

Section 19 of the said 2017 Act relates to "Suit and Proceeding" and Section 19(2) of the said 2017 Act provides that:

"19. (2) To adjudicate disputes for redressal of grievances relating to the teaching staff

of the Non-Government Educational Institution as well as disputes concerning disciplinary action, genuineness of establishment of school and claim for provincialisation in respect of teaching staff of Venture Educational Institution, there shall be an Educational Tribunal for each district within their respective Territorial Jurisdiction. The District and Sessions Judges and the Additional District and Sessions Judges of each District are designated as Educational Tribunal."

In the case in hand, it is seen that the District Scrutiny Committee did not recommend the name of the petitioner for provincialisation of his service. Further, the State Level Scrutiny Committee approved the said recommendation of the District Scrutiny Committee, Lakhimpur recommending the names of the respondent Nos. 4, 5 and 6 for provincialisation of their services under the provisions of said 2017 Act, amended in 2018, which were accordingly approved by the State Government, pursuant to which the Director of Elementary Education, Assam by order dated 05.02.2021 appointed the respondent Nos. 4, 5 and 6 as Tutors in said Rajdar Anuhuchita L.P. School.

Considering the above and from the DISE data of the year 2011-2012 of said Rajdwar Simantawarti M.E. School, annexed by the petitioner, it is found that the petitioner is senior to the respondent No. 6. As such, the petitioner is directed to approach the concerned Educational Tribunal of Lakhimpur District for provincialisation of his service vis-à-vis the respondent No. 6 on or before 30.03.2023 along with the certified copy of this order and a copy of this writ petition including the Annexures appended thereto, with the prayer for interim order.

In the event of filing any such appeal by the petitioner before the concerned Educational Tribunal within the time so specified as directed above, along with any prayer for stay of the Order No. EPD-16/Provn.-UP(Act 2017)/2021/4500 dated 05.02.2021 passed by the Director of Elementary Education, Assam provincialising the service of the respondent No. 6 as a Tutor in Rajdar Anuhuchita L.P. School, the authorities concerned of the said Tribunal shall consider the same in accordance with law, determining who amongst the petitioner vis-à-vis the respondent No. 6 is entitled for provincialisation of their services under the provisions of the said 2017 Act, amended in 2018, after giving an opportunity of hearing to both the petitioner as well as the respondent No. 6 and after verifying the relevant records.

However, it is made clear that till such approach of the petitioner before the Educational

Tribunal upto 30.03.2023, the impugned provincialisation order of the respondent No. 6 dated 05.02.2021 issued by the Director of Elementary Education, Assam, noted above, shall remain suspended.

Thereafter, the concerned Educational Tribunal shall consider regarding interim stay of provincialisation of the service of the respondent No. 6, if any such prayer is made by the petitioner in and/or along with his said appeal.

However, it is made clear that while considering the case of the petitioner vis-à-vis the respondent No. 6 regarding their entitlement of provincialisation under the said 2017 Act as amended, the concerned Educational Tribunal shall pass an independent and a reasoned order, without being influenced by any such observation made in this order, herein above.

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

JUDGE

Comparing Assistant