

GAHC010089532021



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

Case No. : WP(C)/3500/2021

NIKUNJA GOGOI
W/O SRI PABITRA BARMAN, VILL. SHANTIPUR, KNOWARGAON, P.O.
RAMAYAPUR, P.S. SILAPATHAR, DIST. DHEMAJI, PIN 787060, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (ELEMENTARY) DEPTT., DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE DIST. ELEMENTARY EDUCATION OFFICER (DEEO)
DHEMAJI DIST.
PIN 787060

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

DHEMAJI
DIST. DHEMAJI
PIN 787060

5:THE STATE LEVEL HIGH POWER COMMITTEE

REPRESENTED BY THE SENIOR MOST SECY. TO THE GOVT. OF ASSAM
EDUCATION DEPTT.
GUWAHATI
PIN 781006

6:THE DIST. SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
DHEMAJI
DIST. PIN 787060

7:SURJYA KONWAR

(HEADMASTER)
SANTIPUR M.E. SCHOOL
DHEMAJI
P.O. ROMPYAPUR
DHEMAJI
ASSAM
PIN 78706

Advocate for the Petitioner : MR. A DEKA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

09-08-2023

Heard Mr. A. Deka, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned standing counsel, Elementary Education Department, for respondent Nos. 1 to 5 and Mr. G. Pegu, learned Government Advocate, appearing on behalf of the respondent No. 6.

Notice on respondent No. 7 was deemed to be complete by order dated 16-12-2022. However, today also none appeared for the respondent No. 7.

Santipur M.E. School was established on 01-01-1990 under Dhemaji Educational Block and was recognized by the Government by order dated 11-11-2005. The school was also captured under the DISE data with effect from 2009-2010 onwards.

The petitioner was appointed against the second post of Assistant Teacher in the school by the Headmaster/Secretary of Santipur M.E. School on 12-02-1993. She joined the said post on the same day, i.e., 12-02-1993. The respondent No. 7 was also appointed as Assistant Teacher of the said school by the Headmaster/Secretary on 12-02-1993 to which post he also joined on the same date.

In the meantime, the State Government enacted the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (for short, 'Act of 2017'), and accordingly the process for provincialisation of services of the teaching and non-teaching staff of Santipur M.E. School started. The Headmaster of Santipur M.E. School made an application for provincialisation of services of teacher/tutor with regard to Santipur M.E. School on 05-06-2017 by giving details of the said school along with the particulars of the teachers of the said school. Therein, the respondent No. 7 is shown at Sl. No. 1 and his date of joining is reflected as 12-02-1993 and the name of the petitioner appears at Sl. No. 2 as Assistant Teacher and her date of joining is also indicated as 12-02-1993. The District Scrutiny Committee considered the matter and recommended the name of the respondent No. 7 along with two others for provincialisation of services. Thereafter, the State Level Scrutiny Committee considered the matter and accordingly provincialised the service of respondent No. 7.

It is the grievance of the petitioner that the respondent No. 7, who was the Headmaster of the said school, was teaching all subjects and the petitioner was teaching Social Science as well as Language. However, the provincialisation of the service of the respondent No. 7 was done against the post of Social Science. During the pendency of this writ petition, the District Elementary Education

Officer, Dhemaji addressed a communication dated 08-02-2022 to the Deputy Commissioner-cum-Chairman, District Scrutiny Committee, Dhemaji. The relevant portion of the said letter is reproduced herein below:

“That Sir, total 3 numbers of teachers of the school have been sent to the DEE, Assam out of 5 numbers of teacher dated 10/05/2018. The name of Smti. Nikunja Gogoi has been left out from that list.

But, it is seen that, Smti. Nijumja Gogoi was appointed as Asstt. Teacher on honorary basis of 12-02-1993 by the SMC of the school and Sri Sunil Borah was appointed as Asstt. Teacher on honorary basis on 06/11/1998 by the SMC of the school. The appointment date of Sri Sunil Borah has been over written/manipulated as on 06/11/1989 and managed to become Tutor of the School, which is reflected in the Proceeding Book of the School (dated-02/01/2001).”

Considering the communication dated 08-02-2022, this Court is of the considered opinion that the petitioner should file an appeal before the appropriate authority as provided under Section 14 of the Act of 2017.

Accordingly, this writ petition is disposed of directing the petitioner to file an appeal before the Director of Elementary Education within a period of 10 days from today. Thereafter, on receipt of the appeal, the Director, Elementary Education Department shall consider the appeal and dispose of the same by a speaking order, in accordance with law, within a period of three months from today, after giving personal hearing to the petitioner, the respondent No. 7 as well as one Sri Sunil Bora.

The provincialisation of respondent No. 7 and Sri Sunil Bora shall be subject to the decision taken by the Director, Elementary Education Department.

With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant