

GAHC010094522021



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

Case No. : WP(C)/4134/2021

DILU MONI BORUAH
W/O- DEBOKANTA BORUAH, VILL- HATIDANDI (GOPAL GOWALAGAON),
P.O. RAJAPATHAR, P.S. BAKALIA, DIST.- EAST KARBI ANGLONG, ASSAM,
PIN- 782482

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. OF ELEMENTARY EDUCATION DEPTT.,
DISPUR, GHY-06

2:THE COMM. AND SECY. OF FINANCE (STAFF UNIT INSPECTION) DEPTT.
DISPUR
GHY-06

3:THE STATE SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
REP. BY ITS CHAIRMAN-CUM-DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY-19

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE
FOR KARBI ANGLONG DISTRICT REP. BY THE PRINCIPAL SECY. OF KARBI
ANGLONG AUTONOMOUS COUNCIL (KAAC)
DIPHU
PIN- 782460

6:THE INSPECTOR OF SCHOOLS

KARBI ANGLONG DISTRICT CIRCLE
DIPHU (ASSAM)
PIN- 78246

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

20. 01. 2023

Heard Mr. S Chauhan, learned counsel for the petitioner. Also heard Mr. J Chutia, learned standing counsel for the KAAC and Mr. NJ Khataniar, learned standing counsel for the Elementary Education Department.

2. The grievance of the petitioner is that she has been serving at Hatidandi Sunee Ram Dhanuwar M.E. School, Karbi Anglong from 12.01.1999 and she is having the qualification of Graduation and Kovid in Hindi. As such, the petitioner claims that she is eligible to teach Social Science as well as Hindi and eligible for appointment as Social Science teacher as well as Hindi teacher having the aforesaid qualifications.
3. The said school was provincialised under the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (hereinafter referred to as Act, 2017). While taking the process of regularisation of the said school under the Act, 2017, the name of the petitioner was recommended along with two other teachers by the District Scrutiny Committee, Karbi Anglong against the post of language teachers.

4. However, it is her claim that ignoring her claim, some junior teachers, who joined the school in the year 2004, namely, one Samir Chandra Mazumder has been recommended. The petitioner contends that while provincialising their posts, her candidature has been ignored by the authorities and her service was not provincialised. Being aggrieved, the present writ petition is filed.
5. Mr. Chauhan submits that one Rabin Das, who was junior to the petitioner, though was not recommended by the District Scrutiny Committee, his service was provincialised by the State Level Committee. Mr. Chauhan further contends that said Rabin Das expired prior to provincialisation and therefore instead of provincialising a dead man, the service of the petitioner ought to have been provincialised inasmuch as she has been recommended duly by the District Scrutiny Committee.
6. Per contra, Mr. Chutia submits that under the scheme of the Act, 2017, three posts can be provincialised, one against language, another against Maths and Science and other against Social Science. In the case in hand, the District Scrutiny Committee has recommended one Mrinal Chandra Boro, who is senior to the petitioner against subject English and the name of the petitioner against subject Hindi and one Samir Chandra Mazumder against subject Maths and Science. Mr. Chutia further contends that as the District Scrutiny Committee has not recommended any name against Social Science, however, the only person teaching Social Science was Rabin Das and it is the mandate of law that one person must be provincialised teaching Social Science. Accordingly, the State Level Committee has not committed any error recommending the name of Rabin Das, though the name of Rabin Das was not recommended by the District

Scrutiny Committee. Therefore, Mr. Chutia contends that this writ petition is devoid of any merit and the same should be dismissed.

7. Heard the learned counsel for the parties. Section 3 of the Act, 2017 provides for eligibility criteria for selection of educational institution for provincialisation of service of teachers and tutors.
8. Sub-section 11 of Section 3 of the said Act' 2017 provides that in case of venture upper primary school, there shall be minimum three teachers or tutors and at least one teacher each for Science and Mathematics, one for Social Studies and other for language.
9. Section 21 further provides that for the purpose of provincialisation of the services of the teachers and tutors under the Act' 2017 the posts are created as ex-cadre post, which shall be personal to the incumbent. It is further provided in Section 21 that this personal post shall stand abolished on secession of services of the teachers for any reason whatsoever, including retirement, resignation, death etc.
10. Sub-section 2 of Section 21 of the Act, 2017 however gives a power and authority to the administrative department to retain post of any educational institution provincialised under the Act' 2017 after secession of services of the teachers, which may be deemed to be necessary to run the institution.
11. In the aforesaid backdrop now, let this court examine the case of the petitioner. Admittedly, one Mrinal Chandra Boro, who is senior to the petitioner was provincialised against the language (English). Thus, one quota is fulfilled through Mrinal Chandra Boro. Therefore, the petitioner being the junior to said Mrinal Chandra Boro and belonging to the same

category of language, being a Hindi teacher, cannot raise any grievance of non-provincialisation.

12. Another post of Maths teacher was provincialised through one Samir Chandra Mazumder. Though he is junior to the petitioner, however, he was recommended against the quota meant for Maths and Social Science teacher. The other person Rabin Das though was not recommended by the District Scrutiny Committee but was provincialised as Social Science Teacher. Thus, this court cannot find any fault with the recommendation of the Selection Committee in terms of the aforesaid Sub-section 11 of Section 3 of the Act, 2017.
13. However, this court is of the considered opinion that on the death of said Rabin Das, the post of Social Science Teacher shall remain vacant and it will be a duty of the Administrative Department under the scheme of the Act' 2017 and in the interest of the student to consider whether after death of Rabin Das, the institution will need another teacher to teach Social Science. As the petitioner has claimed that she is otherwise eligible to be provincialised as Social Science teacher having graduate degree from Gauhati University, her name can be recommended taking note of the fact that she has rendered the service at the venture stage since 12.01.1999.
14. Considering the aforesaid fact that the petitioner has been rendering service in the school since 12.01.1999 and having qualification, this court is of the considered opinion that a direction can be issued to the Administrative Department to consider the case of the petitioner in term of the Sub-section 2 of Section 21, considering her claim of being eligible for being appointed as a Social Science teacher. The fact also remains that

said Rabin Das expired prior to provincialisation of his post.

15. Accordingly, this writ petition is disposed of with the following directions:

- I. The Administrative Department i.e. Secretary to the Government of Assam, Department of School Education shall consider whether the post provincialised against Rabin Das, Social Science Teacher can be retained in exercise of power under Sub-section 2 of Section 21 of the Act, 2017 inasmuch as said Rabin Das expired prior to provincialisation.
- II. If the Administrative Department is of the opinion that such post is required to be retained in the interest of the school and its pupil, the case of the petitioner may be considered for provincialisation against the said post in term of the extent norms, if she is qualified as claimed.

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

JUDGE

Comparing Assistant