

GAHC010101092022



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

Case No. : WP(C)/3518/2022

ABDUR ROAF
S/O ABDUS SAMAD, VILL-SONERTARY, P.O.-PACHIM MAZDIA, P.S.-
TARABARI, DIST-BARPETA, ASSAM, PIN-781305

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI-6

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

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER OF
BARPETA DISTRICT
ASSAM
PIN-781301

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BHAWANIPUR
DIST-BARPETA
ASSAM
PIN-781316

7:MISS LALBHANU BEGUM
(TUTOR OF SONERTARY ANCHALIK M.E. MADRASSA)
S/O LT. SAHED ALI
VILL- SONERTARY
P.O.-PACHIM MAZDIA
P.S.-TARBARI
DIST- BARPETA
ASSAM
PIN-781305

8:MD. ASHAK ALI
(TUTOR OF SONERTARY ANCHALIK M.E. MADRASSA)
VILL-SONERTARY
P.O.-PACHIM MAZDIA
P.S.-TARBARI
DIST-BARPETA
ASSAM
PIN-781305

9:THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPARTMENT OF SCHOOL EDUCATION AND LITERACY
REP. BY ITS SECRETARY.

10:SARVA SIKSHA ABHIJAN
REP. BY ITS MISSION DIRECTO

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

05.06.2023

Heard Shri M Ali, learned counsel for the petitioner. Also heard Shri B Kaushik, learned Standing Counsel, Education (Elem.) Department, Assam as well as Shri J Laskar, learned counsel for the respondent no. 8. Shri DFA Ahmed, learned counsel

has appeared for the respondent no. 7.

2. Both the private respondent nos. 7 and 8 have filed separate interlocutory applications for modification/vacation/alteration of the order dated 10.06.2022. The petitioner has also filed objections to the said interlocutory applications.

3. However, considering the nature of the grievance and the facts and circumstances, instead of considering the interlocutory applications, the writ petition, as a whole, has been taken up for disposal.

4. The case projected by the petitioner is that he is a Social Science Teacher of the Sonertary Anchalik ME Madrassa in the district of Barpeta (hereinafter referred to as the School). The School was a Venture Upper Primary School. Pursuant to the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017), there was a move for selection of venture institutions for provincialisation of the services of the Teachers. As a part of the said move, the respondent no. 7, who was the Head Mistress of the School, had forwarded the names of three Teachers, including herself by excluding the name of the petitioner. According to the petitioner, such exclusion is in the teeth of the provision of Section 3 (1) (xi) of the Act of 2017 which provides that there should be minimum three Teachers and at least, one Teacher each for – i) Science and Mathematics ii) Social Studies and iii) Languages or Teachers.

5. By drawing the attention of this Court to the staff pattern annexed to the writ petition, Shri Ali, learned counsel for the petitioner has submitted that both the respondent nos. 7 and 8 are Language Teachers and the petitioner is the only Teacher in the subject of Social Studies. The learned counsel further submits that one Sofiur

Rahman has also been recommended, who is the Mathematic/Science Teacher against whom, the petitioner does not have any grievance.

6. The contention of the petitioner is that the names of two Language Teachers could not have been recommended by overlooking the fact that the petitioner who was the Social Science Teacher was eligible for such recommendation in accordance with the provision of the Act.

7. Shri Kaushik, learned Standing Counsel, however, submits that the rejection of the case of the petitioner could be for various other reasons and the eligibility criteria for three numbers of Teacher have, otherwise been met in the School in question. He further submits that under Section 14 of the Act of 2017, there is a provision for appeal before the State Level Scrutiny Committee and before whom, the petitioner has not filed any representation and therefore, this writ petition is not maintainable.

8. Both Shri Laskar as well as Shri Ahmed, learned counsel for the respondent nos. 7 and 8, while endorsing the submission of the learned Standing Counsel, Education (Elem.) Department have submitted that the requirements laid down in Section 3 (1) xi) are met and the respondent no. 7 was also the Head Mistress of the School which fact has been taken into consideration. Shri Laskar, learned counsel further submits that the respondent no. 7 had, in fact recommended the names of all the Teachers, including the name of the petitioner which was, however, rejected by the District Level Scrutiny Committee.

9. After hearing the parties and on perusal of the records, this Court is of the opinion that while laying down the eligibility criteria for provincialisation of the services of the Teachers of Venture School in case of Venture Upper Primary School, apart from the requirement of having three minimum numbers of Teachers or Tutors, the said requirement is qualified by providing that one Teacher each has to be there for three

disciplines, namely, i) Science and Mathematics, ii) Social Studies and iii) Language.

10. In the instant case, from the records, nothing is discernible as to why the case of the petitioner was overlooked and the names of two Language Teachers, namely, the respondent no. 7 and 8 were recommended. At the same time, this Court has also considered the inbuilt provision of the Act of 2017 which provides for a grievance redressal mechanism in the form of Section 14 whereby an Appellate Authority has been designated to look into the grievance against any recommendation made by the District Level Scrutiny Committee.

11. In view of the above and noticing that there appears to be some aberration in the statute prescribed for consideration of such provincialisation, the instant writ petition is closed by directing the petitioner to submit an appeal before the Appellate Authority, namely, State Level Scrutiny Committee within a period of 15 days from today.

12. On submission of such appeal, the same is required to be taken for consideration and disposed of expeditiously preferably within an outer limit of 45 days from the date of receipt of the appeal.

13. To balance the equities and in the interest of justice, it is provided that till such appeal is disposed of, the interim order dated 30.05.2022 passed by this Court will be in operation.

14. During the consideration of the said appeal, the affected parties are to be given an opportunity of hearing and the appeal be disposed of by passing a speaking order.

15. It is further made clear that if the appeal as provided is not submitted within a period of 15 days from today, the interim order would stand vacated.

16. The writ petition is, accordingly disposed of.

JUDGE

Comparing Assistant