

GAHC010101932023



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

Case No. : I.A.(Civil)/1308/2023
WP(C)/5661/2021

CHAKRADHAR KALITA,
S/O SANTAN BARMAN, TUTOR, 573 NO. KENDUKUCHI LP SCHOOL, PIN
781341, DISTRICT NALBARI, VILLAGE AND P.O. KENDUKUCHI, NALBARI,
ASSAM, PIN 781341.

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 (CHAIRMAN
THE STATE LEVEL SCRUTINY COMMITTEE)
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE DEPUTY COMMISSIONER

CHAIRMAN
DIST. SCRUTINY COMMITTEE
NALBARI 781335
ASSAM
INDIA.

4:THE DIST. ELEMENTARY EDUCATION OFFICER

NALBARI 781335
ASSAM

INDIA.

5:SARBESWAR RAJBONGSHI
ASSTT. TEACHER/TUTOR KANAKLATA BALIKA M.E. SCHOOL
KENDUKUCHI-781341
NALBARI
ASSAM
INDIA

6:TANKESWAR HAZARIKA

ASSTT. TEACHER/TUTOR KANAKLATA BALIKA M.E. SCHOOL
KENDUKUCHI 781341
NALBARI
ASSAM
INDIA.

7:PARAMESH RAJBONGSHI

S/O LATE JIBAN RAJBONGSHI
R/O VILL. KENDUKUCHI
P.O. KENDUKUCHI
NALBARI 781341
ASSAM
INDI

Advocate for the Petitioner : MR N SARMA

Advocate for the Respondent : SC, EDU

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

26.05.2023

Heard Shri N Sarma, learned counsel for the applicant-respondent no. 5 in the connected writ petition, who, by means of this application, has prayed for modification/vacation/alteration of the *ex-parte* interim order dated 28.10.2021 passed by this Court in the connected writ petition.

To appreciate the issue, it would be beneficial to refer to the aforesaid order of this Court. This Court, while issuing notice, vide its order dated 28.10.2021, had made

the following observation:

“Considering the balance of convenience and irreparable loss that the petitioner may suffer, further effect of provincialization in respect of respondent no. 5 Chakradhar Kalita shall remain stayed until further order(s).”

Shri Sarma, learned counsel for the applicant submits that the statute holding the field is, namely, Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017). Referring to the relevant provision of the statute, namely, Section 3 (1) (xi), the learned counsel for the applicant has submitted that for the School in question, the criteria laid down for selecting such School for provincialisation of the services of the Teachers are 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.

In the instant case, he submits that while the applicant was teaching both English and Mathematics, the opposite party-writ petitioner was teaching Assamese language. Shri Sarma, learned counsel further submits that he is senior to the opposite party-writ petitioner of having joined the services on 18.02.1987 while the writ petitioner was given a formal appointment on 20.03.1988. The learned counsel, accordingly submits that there is no basis for continuing with the interim order as, by such order, the writ petitioner is not gaining anything and rather, the applicant is suffering immense prejudice.

Refuting the said contention, Shri DS Deka, learned counsel for the opposite party-writ petitioner has submitted that so far as his client is concerned, though the formal order of appointment is 20.03.1988, it was given effect from 25.11.1987 that is the date from which he was discharging his service. He also submits that the

petitioner ought to be given certain priority as, he is teaching Assamese language which is in the interest of public in general.

After hearing the parties and on perusal of the materials on record, it appears that even if the date from which the writ petitioner's services have been recommended i.e., 25.11.1987 is considered, he is junior to the applicant-respondent no. 5. That apart, it also transpires that the process by which the applicant was selected by the District Level Committee (DLC) and also the State Level Committee (SLC) are not the subject matters of challenge.

It is an established principle of law that this Court in exercise of powers of judicial review can only examine the decision making process and not the decision itself. In other words, it is the lawfulness of the decision which can be the subject matter of challenge and not the soundness of the same. That apart, this Court is also of the view that the interim order is also not benefiting the writ petitioner, as benefit of provincialisation is not being enjoyed by the writ petitioner. It is a different matter that if the petitioner ultimately comes successful in this writ petition, he may get the fruits of the provincialisation of his service.

In view of the aforesaid facts and circumstances, this Court is of the opinion that the interim order 28.10.2021 is liable to be vacated and the same is, accordingly vacated.

The interlocutory application is, accordingly allowed.

JUDGE

Comparing Assistant