

GAHC010108262021



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

Case No. : WP(C)/3452/2021

SK MOHAMMAD ZAKIR HUSSAIN
S/O. ABDUL BARI SHEIKH, WARD NO.XI, BAHADURTARI, P.O. AND DIST.
DHUBRI, ASSAM, PIN-783301.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT. (ELEMENTARY), DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM CUM THE CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION

DHUBRI
REP. BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN-783301.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
DIST. DHUBRI
ASSAM
PIN-783301.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

GAURIPUR
DIST. DHUBRI
ASSAM. PIN-783331.

6:NOWSHAD ALI SARKAR

HEADMASTER OF BAHADURTARI M.E. SCHOOL
S/O. LT. BELAT ALI SARKAR
R/O. WARD NO.XI
BAHADURTARI
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN-783301.

7:ANOWAR HUSSAIN SHEIKH

S/O. AYEN UDDIN
VILL. KATLAMARI
P.O. PADMER ALGA
DIST. DHUBRI
ASSAM
PIN-783339.

8:ABDUL JUBBAR MAJUMDAR

S/O. LT. TAHAJUDDIN BEPARI
R/O. WARD NO.XI
BAHADURTARI
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN-783301

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-04-2023

Heard Mr. R. Islam, learned counsel for the petitioner and Mr. P.K.Borah, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 4 & 5. Also heard Ms. D.D.Barman, learned Government Advocate, Assam for the respondent No. 3 and Mr. J. Abedin, learned counsel for the private respondent No. 8.

No representation on behalf of the respondent No. 7 though the name for him has been reflected in the cause list.

Matter pertains to provincialisation of services of the petitioner vis-à-vis the respondent No. 8 under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

The claim of the petitioner is that since February 2008, he is serving as 1st Assistant Teacher in Bahadurtari M.E. School in the Gauripur Education Block of Dhubri District since its venture stage and has been teaching subject of Social Studies to the students of said venture school.

The respondent No.7 is serving as a Science Teacher of said school during its venture stage and has been teaching Mathematics and Science to the students of said school.

The respondent No. 8 is also serving as a Science Teacher of said school during its venture stage and has been teaching Mathematics and Science to the students of said school.

Though the District Scrutiny Committee (DSC), Dhubri recommended the names of the petitioner and the respondent Nos. 6, 7 & 8 for provincialisation of services as Assistant Teacher of Social Studies; Headmaster-cum-Language Teacher; Assistant Teacher of Mathematics & Science and Assistant Teacher of Science & Mathematics respectively but the Director of Elementary Education, Assam provincialised the service of the respondent No. 7 who was a Science Teacher of said Bahadurtari M.E. School as tutor vide order No. EPD-16 Provn-UP (Act 2017)/2021-2216 dated

05.02.2021 without considering the recommendation of the DSC, Dhubri and in violation of the provisions of Section 3 (1)(xi) of the said 2017 Act. Hence, this writ petition preferred by the petitioner.

Section 3 (1)(xi) of said 2017 Act provides 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).

Section 14 of 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.”

It is brought to the notice of the Court that the petitioner on 14.07.2021 submitted an appeal before the Commissioner & Secretary to the Government of Assam in the Elementary Education Department as provided under Section 14 of the said 2017 Act, which is yet to be considered and disposed of.

After hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the petitioner to submit a certified copy of this order along with the copy of this writ petition including the annexures appended thereto and also the copy of his earlier appeal dated 14.07.2021, noted above, before the Secretary to the Government of Assam **on or before 29.04.2023** obtaining necessary acknowledgment from the said authority in that regard.

In the event of receipt of certified copy of this order as noted above, the Secretary to the Government of Assam shall dispose of the appeal of the petitioner dated 14.07.2021 in accordance with law following the relevant provisions of the said 2017 Act, within a period of 90 (ninety) days

after giving an opportunity of hearing to the petitioner as well as the respondent Nos. 6, 7 & 8.

It is made clear that if in the meanwhile, the petitioner is found to be eligible for provincialisation in terms of the provisions of said 2017 Act, noted above, the respondent authorities in the Elementary Education Department shall provincialise his service from the date of provincialisation of the other teachers of said Bahadurtari M.E. School in the Gauripur Education Block of Dhubri District, giving him all such financial and other service benefits as per his entitlement in accordance with law.

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

JUDGE

Comparing Assistant