

GAHC010108502023



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

Case No. : WP(C)/2870/2023

DIPEN TAMULI AND ANR
S/O LATE DULAL TAMULI, VILL-BALAMA, HEADMASTER OF BALAMA L.P.
SCHOOL, DIST-LAKHIMPUR, ASSAM

2: RASHMI SAIKIA
W/O NIRMOL SAIKIA
VILL-SOLMARIA
ASSISTANT TEACHER OF BALAMA L.P. SCHOOL
DIST-LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-06

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

3:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY THE CHAIRMAN CUM DIRECTOR OF ELEMENTARY
EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE MISSION DIRECTOR
SSA
ASSAM
KAHILIPARA
GHY-19

5:THE DISTRICT SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN
THE ADDITIONAL DEPUTY COMMISSIONER
LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-787001

6:THE DISTRICT ELEMANTARY EDUCATION OFFICER
LAKHIMPUR
DIST-LAKHIMPUR
ASSAM
PIN-787001

7:DISTRICT MISSION COORDINATOR
SSA LAKHHIMPUR
DIST-LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

13.12.2023

Heard Mr. M. Khan, learned counsel for the petitioners. Also heard Mr. B. Choudhury, learned Standing Counsel, SSA for the respondent Nos.4 and 7.

2. The petitioners in the present proceedings were initially appointed on 24.01.1989 and 05.01.2002 in Balama L.P. School in Lakhimpur district by the managing committee of the said school. The said school at the relevant point of time was in the venture stage. Thereafter, the school was taken up for provincialisation and the District Level Scrutiny Committee (DLSC) had recommended the name of the teachers of the Balama L.P. School under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational

Institutions) Act, 2017 (for short '2017 Act'). However, the services of the petitioners were not provincialised. On enquiry, the petitioners came to learn that their cases for provincialisation was not considered as it was found that the said school over the years has two different DISE Codes. The petitioners accordingly instituted WP(C) 4728/2022 and this Court vide order dated 25.07.2022 disposed of the said writ petition with a direction to the Secretary to the Government of Assam, Education (Elementary) Department to consider the appeal dated 25.08.2021 filed by the petitioners. It was also provided therein that the said authority while disposing of the appeal shall take into account the verification report submitted by the SSA, Assam. Accordingly, vide order dated 04.03.2023 (Annexure-14 to the writ petition), the Secretary to the Government of Assam, Department of School Education on a consideration made with regard to the appeal of the petitioners, proceeded to dismiss the same. The ground of dismissal was that the case of the petitioners for provincialisation of services under the 2017 Act could not be recommended as the school had two different DISE Codes during the period of 2006-07 to 2017-18.

3. Mr. B. Choudhury, learned Standing Counsel, SSA, Assam by placing on record the communication dated 26.06.2023 received by him, submits that it is a fact that the said school has two different DISE Codes but the same pertain to the same very school wherein the petitioners are working. It is submitted by Mr. B. Choudhury that the school for some reason was dropped in the year 2009-10 and the DISE data for that period was not captured. Accordingly, when the DISE data was captured for the subsequent year, the DISE CODE of the petitioners' school was changed. However, he submits that the two different DISE Codes pertain to the same very school, i.e. Balama L.P. School. The relevant portions of the aforesaid communication are quoted herein:-

“Reasons of two DISE codes of BALAMA LPS:

Initially, DISE code of the school was 18120608602, the last two digits is the serial number of the school under three digits village code (086). Initially '02'

was assigned as the last two codes of BALAMA LPS. As the school was dropped in the year 2009-10. Two schools with last two digits were already available in the database as '03' and '04'. When the school was newly entered 2nd time, it automatically generated another code '05' under that village code as per option available in the DISE software for which 2nd DISE code was generated as 18120608605."

4. I have heard the learned counsel appearing for the parties and perused the material available on record. The case of the petitioners vide impugned order dated 04.03.2023 was not favourably considered only on the ground that the school in question had two different DISE codes. Relevant observation made in this connection in the order dated 04.03.2023 is quoted herein:-

"Accordingly, the SSA, Assam had verified the above mentioned points and submitted the report of DISE data (NUEPA, New Delhi) with comment in remarks Column as "DISE 2006-07, 2007-08 and 2008-09, the School against the DISE Code is found. In DISE 2009-10, the school name is not there. But since 2010-11 DISE till DISE 2017-18, the DISE Code has been changed to 18120608605 instead of 18120608602. Records need to be verified physically.

Decision:

The matter was placed before the SLSC as well as Joint Committee however, both the Committees decided to stand by the report of DISE data of SSA, Assam, so both the committees could not recommend the name of the petitioners for provincialisation of Service as per Act 2017. Hence the claim for the petitioners for provincialisation of service is hereby rejected.

This is issued in compliance of the Hon'ble High Court's Order dated 25.07.2022 passed in WP(C) 4728/2022 and COP(C) 660/2022 Dipen Tamuli & anr v/s State of Assam & Ors."

5. It is found from the records that the initial DISE code of the petitioners' school was "18120608602" and the said DISE code was placed against the name of the petitioners' school, i.e. Balama LP School for the year 2006-07 to 2008-09. It is found

that for the year 2009-10, there was no DISE data captured with regard to the school in question and as contended by Mr. B. Choudhury, learned Standing Counsel, SSA, the school was dropped in the year 2009-10. For the subsequent year, i.e. 2010-11, the DISE code changed to "18120608605" and the same continued till 2021. What is interesting to note that although the DISE Code changed after 2008-09, the teachers working in the school since 2006-07 onwards till the year 2021 remained the same. The petitioners' name were reflected as teachers of the said school from the year 2006-07 onwards till the year 2021. The clarification as brought on record by the authorities of SSA, Assam and as quoted hereinabove, would reflect that it is only the DISE Code that was authorized to the petitioners' school, which was continuing since 2006-07, was changed from 2010-11 on account of a technical default, which may have occasioned on account of the school not applying for renewal of the DISE code in the year 2009-10 and/or for any other reason. But the fact remains that the clarification provided by the SSA in the present proceedings as well as RTI reply provided by the SSA authorities to the petitioners (Annexure -15 series to the writ petition) would reflect that it is the same school with the same incumbents, i.e. the petitioner Nos.1 and 2, who continued to figure all along since 2006-07 till 2021. As such, there can arise no doubt that it is the same very school with the same very incumbents and there is no change of either the school or the incumbents after 2010-11 on account of change of DISE code, which occasioned as noted above on account of technical issue.

6. In view of the above, this Court is of the view that the respondent No.1, Secretary to the Government of Assam, Department of School Education while disposing of the appeal preferred by the petitioners herein has not taken into account the fact that although the DISE code has changed but the school and the incumbents therein, i.e. the petitioners remained the same all along. The said aspect being a vital aspect and not having been considered while passing the impugned order dated 04.03.2023 by the respondent No.1, the said order stands vitiated. Accordingly, the

impugned order dated 04.03.2023 is interfered with. The matter now stands remanded to the respondent No.1 with a direction to reconsider the appeal of the petitioners and pass a fresh speaking order after taking note of the fact that the DISE code of the school has changed on account of a technical error but the school as well as the incumbent teachers therein remained the same all along. The said exercise be carried out expeditiously and completed within a period of 45 days from the date of receipt of a certified copy of this order.

7. It is needless to mention that in the event it is felt necessary, the appellate authority can provide hearing to the petitioners and if required, can get necessary clarification from the SSA authorities.

8. The writ petition accordingly stands allowed to the extent indicated above.

There would be no order as to costs.

The copy of the communication dated 26.06.2023 as produced by Mr. B. Choudhury, learned Standing Counsel, SSA, is kept on record and marked as 'X'.

JUDGE

Comparing Assistant