

GAHC010111392021



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

Case No. : WP(C)/3763/2021

ABDUL BATEN
S/O LT. OHEJ ALI
VILL- KIRTANPARA PT.II
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM,
PIN-783384

VERSUS

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

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
-CUM-CHAIRMAN
STATE SCRUTINY COMMITTEE
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DEPUTY COMMISSIONER
BONGAIGAON-CUM- CHAIRMAN
DISTRICT LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783380

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
-CUM- MEMBER SECRETARY OF DISTRICT LEVEL SCRUTINY
COMMITTEE
BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783380

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
SRIJANGRAM P.O. AND P.S. SRIJANGRAM
DIST. BONGAIGAON
ASSAM
PIN-783384

7:TASER ALI AHMED
S/O ABDUL KADER
VILL- BALARCHAR
P.O. KIRTANPARA
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM

PIN-78338

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-05-2023

Heard Mr. H. R. Ahmed, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School Education for the respondent Nos.1, 3, 5 and 6. Also heard Mr. B. Gogoi, learned Standing Counsel, Finance Department for the respondent No.2, Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.4 as well as Mr. A. Hussain, learned counsel for the respondent

No.7.

2) Pursuant to the order dated 27.03.2023, the Director of Elementary Education (DEE), Assam by communication No.EPD/H/136/2022/20 dated 04.04.2023 apprised the Court that in the cases Upper Primary Schools of Assamese Medium there are three languages namely, Assamese, English and Hindi, whereas, in M.E. Madrassa Arabic is available as another language along with other three languages of Assamese, English and Hindi.

3) By the said communication dated 04.04.2023, the DEE, Assam have also apprised the Court that in Bengali Medium Upper Primary Schools, Bengali Language and in Bodo Medium Schools, Bodo Language respectively, are available as another language along with those three languages of Assamese, English and Hindi.

4) With regard to Hindi Medium Upper Primary Schools, the DEE, Assam by the said communication dated 04.04.2023 apprised the Court that those Schools also contain three languages, namely, Assamese, English and Hindi with Hindi as Language-1 and Assamese as Language-3.

5) After passing his Higher Secondary Examination in the year 1988, the Managing Committee of 3 No.Balarchar Nabajyoti M.E. Madrassa in the Srijangram Education Block during its venture stage appointed the petitioner as an Assistant Teacher in the said School, pursuant to which the Secretary of its School Managing Committee (SMC) on 20.08.2000 issued appointment letter to the petitioner. Accordingly, the petitioner on 25.08.2000 joined the said School as an Assistant Teacher in Language during its venture stage and teaching the subject of Assamese to the students of the said School.

6) In the meanwhile, the petitioner also completed 2 years Diploma in Elementary Education in the year 2018.

7) While considering the cases of the teaching and non-teaching staff for provincialisation of their services working in said 3 No. Balarchar Nabajyoti M.E.

Madrasssa under *the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended, the District Scrutiny Committee (Elementary), Bongaigaon recommended the case of the petitioner for provincialisation of his service as a Language Teacher of the said Madrassa. However, disregarding his better claim, the State Level Scrutiny Committee recommended the name of respondent No.7 for provincialisation of his service, pursuant to which the respondent No.7 was considered for provincialisation of his service and his name was published in the Website of the DEE, Assam for provincialisation of his service.

8) It is submitted by the petitioner that he joined the said Madrassa on 25.08.2000 pursuant to the appointment order dated 20.08.2000, whereas, the respondent No.7 joined the said Madrassa only on 27.03.2006 being appointed by the SMC in its resolution dated 23.03.2006 and as such, he is much junior to the petitioner in service in said 3 No. Balarchar Nabajyoti M.E. Madrasssa.

9) Being aggrieved, the petitioner has preferred this writ petition.

10) The Court while issuing notice to the respondents by order dated 16.08.2021 in the interim, stayed the benefit of provincialisation in respect of the respondent No.7.

11) Though the respondent No.7 filed an Interlocutory Application being I.A.(C) No.92/2022 in the present writ petition for modification/alteration/vacation of the said interim order dated 16.08.2021, but the Court after hearing the learned counsels for the parties, by order dated 26.05.2022 rejected such prayer of the respondent No.7.

12) 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.”

13) The Hon'ble Supreme Court in the case of *the Commissioner of Income Tax and Another Vs. Chhabil Dass Agarwal* reported in (2014) 1 SCC 603 held that “*when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory provision.*”

14) As there is a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Secretary, Department of School Education (Elementary), Assam as provided under Section 14 of said 2017 Act as amended, on or before **25.05.2023** for redressal of his grievances along with a certified copy of this order, a copy of this writ petition including the Annexures appended thereto obtaining necessary acknowledgement from the said authority in that regard

15) In the event of filing of such appeal by the petitioner before the Secretary, Department of School Education (Elementary), Assam as directed above, within the time so specified, the said authority on verification of relevant records in original and after giving an opportunity of hearing to the petitioner as well as the respondent No. 7 shall dispose of the said appeal of the petitioner within ninety days from the date of its receipt by a reasoned order intimating him about the outcome of his said appeal.

16) In the event of filing of such appeal by the petitioner before the authority concerned within the time so specified, the order dated 16.08.2021 passed by the Court staying the benefit of provincialisation of the respondent No.7 shall remain in force.

17) However, if the petitioner fails to prefer the appeal before the authority within the time so specified, the order dated 16.08.2021 passed by the Court staying the benefit of provincialisation of the respondent No.7 shall stand vacated.

18) If during such determination the concerned appellate authority comes to a conclusion that the service of the petitioner for wrong reasons could not be provincialised, he shall be considered for provincialisation of his service as a Language Teacher in said 3 No. Balarchar Nabajyoti M.E. Madrasssa in accordance with law and the relevant provisions of said 2017 Act, as amended.

19) With the above observation and direction, this writ petitions stands disposed of.

20) Copy of the communication dated 04.04.2023 of the Director of Elementary Education, Assam placed before the Court today by Mr. B. Kaushik, learned Standing Counsel, Department of School Education be kept as part of the record.

JUDGE

Comparing Assistant