

GAHC010111392021



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

Case No. : WP(C)/3830/2021

ABDUR RAHIM
S/O LT. PASHAN ALI
VILL. NARARBHITA PT-IV
P.O. NARARBHITA
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM PIN 783384

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM EDUCATION (ELEMENTARY) DEPTT.
DISPUR GHY 6

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR GHY 6

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

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

5:THE DIST. ELEMENTARY EDUCATION OFFICER CUM MEMBER SECY. OF
DIST. 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:SORHAB ALI
LANGUAGE TEACHER
NARARBHITA M.E. MADRASSA
VILL. AND P.O. NARARBHITA
P.S. MERERCHAR
DIST. BONGAIGAON
ASSAM PIN 783384

Advocate for : MD H R AHMED
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS

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 (Elementary) 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) The Headmaster-cum-Secretary of Nararbhita ME Madrassa under Srijangram Education Block of District-Bongaigaon pursuant to the resolution adopted by the Managing Committee of said Madrassa on 15.01.1987, appointed the petitioner as an Assistant Teacher of the said Madrassa since its venture stage, while it was in the erstwhile District of Goalpara. Accordingly, the petitioner joined his service on

16.01.1987 and since then, he is serving as an Assistant Teacher in the said Madrassa teaching Assamese Language to its students.

3) While the cases of teaching staff of the Venture Educational Institutions were taken up for consideration for provincialisation 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 name of the respondent No.7 for provincialisation disregarding the better claim of the petitioner on the basis of which, the name of the respondent No.7 along with 2 other teachers have been uploaded in the website of the Directorate of Elementary Education, Assam as eligible for provincialisation under the said 2017 Act.

4) Subsequently, on the recommendation of the State Level Scrutiny Committee, the service of the respondent No.7 was provincialised as a Language Teacher by order dated 05.02.2021 under the said 2017 Act.

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

6) Section 3(1) (xi) of said 2017 Act, as amended 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 standards 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).

7) 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.”

8) 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.*”

9) 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 (Elementary) Education, 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

10) In the event of filing of such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, 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.

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

JUDGE

Comparing Assistant