

GAHC010113842023



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

Case No. : WP(C)/3034/2023

1. LUKESWAR CHANGMAI AND 2 ORS
S/O LATE SARBESWAR CHANGMAI, R/O VILL-KACHAITING, P.O.-
HATIGARH, DIST-DHEMAJI, ASSAM.

2: LOKESWAR BORGOHAI
S/O PHULESWAR BORGOHAI
R/O VILL-HATIGARH
P.O.-HATIGARH, DIST-DHEMAJI, ASSAM.

3: MRS. ANITA CHAMUAH
W/O BINOY CHANGMAI
R/O VILL-NALARIPAM
P.O.-HATIGARH, DIST-DHEMAJI, ASSAM

VERSUS

1.THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, ASSAM, DISPUR, GUWAHATI-06

2:THE STATE LEVEL SCRUTINY COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,
DIRECTOR OF ELEMENTARY EDUCATION, ASSAM
KAHILIPARA, GUWAHATI-19

3:THE DIRECTOR OF ELEMENTARY EDUCATION, ASSAM
KAHILIPARA, GHY-19

4:THE MISSION DIRECTOR
AXOM SARBA SIKSHA ABHIYAN MISSION
KAHILIPARA, GUWAHATI-19

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER, DHEMAJI
P.O. AND DIST-DHEMAJI, ASSAM, PIN-787057

6:THE DISTRICT SCRUTINY COMMITTEE
REPRESENTED BY THE DEPUTY COMMISSIONER DHEMAJI
P.O. AND DIST- DHEMAJI, ASSAM, PIN-78705

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, ELEM. EDU

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

07.12.2023

Heard Mr. M. Khan, learned counsel for the petitioners. Also heard Mr. P.K. Bora, learned Standing Counsel, Elementary Education Department and Mr. S. Bora, Standing Counsel, SSA, Assam.

2. The petitioners, who are working as the Headmaster and Assistant Teachers in Jeuti Girls' M.E. School in the district of Dhemaji, a venture educational institution, have instituted the present proceedings against an order dated 09.01.2023 issued by the Director of Elementary Education, Assam by which the claim of the said school was rejected on the ground that the school in question purportedly did not have the requisite number of students enrolled as per the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (in short, the Act of 22017) for the sessions 2016-2017 and 2017-2018.

3. Mr. M. Khan, learned counsel for the petitioners, referring to the pleadings available in the writ petition, has contended that the requirement of the said Act of 2017, more particularly, Section 3(1)(iv) is that a venture primary or upper

primary school has to have a minimum total enrolment of 30 (thirty) students on the date of coming into force of the Act. The said Act of 2017 had come into force on 11.04.2017. He further contended that for the session 2017-2018, the school had an enrolment of 30 students and as such, the school had fulfilled the requirement of the provision of 3(1)(iv) of the said Act of 2017 and as such, he prayed that the order dated 09.01.2023, having not reflected the correct position, requires interference from this Court.

4. Mr. S. Bora, learned Standing Counsel, SSA has contended that affidavit on behalf of the said authority has been filed wherein requisite data pertaining to school in question was brought on record.

5. I heard the learned counsel for the parties and considered the materials available on record.

6. The issue here being with regard to non-satisfaction by the venture educational institution, wherein the petitioners are presently serving with the provision of Section 3(i)(iv) of the said Act of 2017, the provisions thereof are extracted hereinbelow.

“Venture Educational Institutions has a minimum total enrolment of 30 students if it is a Venture Primary or Upper Primary School as on the date of coming into force of this Act”

7. The said provision mandates that for the purpose of considering the eligibility of the teachers working in a particular venture educational institution in the primary or in the upper primary stage, the said institution must have enrolment of students which is not less than 30 on the date of the said Act 2017 came into force. It is stated at the bar that the enrolment must be for the session 2017-2018 as the Act had come into force on 11.04.2017.

8. On perusal of the order dated 09.01.2023, it is seen that the Director,

Elementary Education, Assam had rejected the claim of the petitioners on the ground that the school did not have the enrolment of 30 students for the sessions 2016-2017 and 2017-2018. It is to be noted that no other ineligibility being pointed out, it is to be construed that only on account of non-enrolment of requisite number of students in the venture educational institution wherein the petitioners are serving their services were not taken up for provincialisation.

9. The reference made to the enrolment of 2016-2017 is not in consonance with the provision of Section 3(1)(iv) of the Act of 2017 extracted hereinabove and it is only the enrolment in the institution for the session 2017-2018, which is material to be considered, for the purpose of provincialisation of the employees working in such institution.

10. The affidavit that has been filed on behalf of the respondent No.4 (Mission Director, Axom Sarba Siksha Abhiyan Mission) reveals that the said school had enrolment of 30 students during the session 2017-2018. The said information being produced from the DISE data maintained, the same has to be given credence. The venture educational institution wherein the present petitioners are serving, having admittedly been found to have 30 students during the session 2017-2018, it is the considered view of this Court that they fulfill the requirement of Section 3(1)(iv) of the said Act of 2017.

11. Accordingly, the case of the petitioners are now to be considered further by the authorities concerned in terms of the said Act of 2017.

12. In view of the aforesaid conclusion, the impugned order dated 09.01.2023 (Annexure-9) passed by the Director, Elementary Education, Assam, is hereby interfered with. The matter stands remanded back to the Director, Elementary Education, Assam who shall now have to consider the case of the petitioners by

reckoning that the school of the petitioners had 30 students during the session 2017-2018 and have fulfilled the conditions prescribed under Section 3(1)(iv) of the said Act of 2017.

13. The consideration under the required to be made for the purpose of provincialisation of the services of the petitioners shall be made by the concerned authorities and the process be completed within a period of 3(three) months from the date of receipt of a certified copy of this order. The authorities while considering the case of the petitioners shall also be at liberty to examine as to whether the petitioners fulfill any other mandated requisite eligibility criteria for provincialisation of their services as may be provided under the said Act of 2017. On conclusion of the said process, necessary orders as may be required, shall be passed within the time-frame as prescribed hereinabove.

14. The writ petition stands allowed to the extent indicated above.

JUDGE

Comparing Assistant