

GAHC010115302022



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

Case No. : WP(C)/5246/2022

SMT. INDRANI BORO
W/O. RANA RAMCHAIARY, VILL. BAMUNBARI, P.O. NATHKUCHI, P.S.
TIHU, DIST. NALBARI, ASSAM, PIN-781355.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR

ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BAKSA
P.O. MUSHALPUR
DIST. BAKSA
ASSAM
PIN-781343.

4:THE DISTRICT SCRUTINY COMMITTEE

BAKSA
P.O. MUSHCLPUR
DIST. BAKSA
ASSAM
PIN-781343
(REP. BY ITS CHAIRMAN)

5:THE HEADMASTER

BODOFA UPENDRA NATH BRAHMA M.E. SCHOOL
VILL. MURMELA
P.O. MURMELA
DIST. BAKSA
ASSAM
PIN-781346

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : S.C ELEM. EDU ,, S.C BTC (R-3 & 4)

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

27/04/2023

Heard Mr. B Islam, learned counsel for the petitioner. Also heard Mr. N J Khataniar, learned Standing counsel, Department of School Education for the respondent Nos. 1 & 2 and Mr. R K Mushahary, learned Standing counsel, BTC for the respondent Nos. 3 & 4.

2. Petitioner, who belongs to the Schedule Tribe (Plains) Bodo Kachari Community passed her Higher Secondary Examination in the year 2007 with English, MIL (Bodo), Physics, Chemistry and Biology securing 262 marks with 52.4%.

3. On her application for appointment, the Managing Committee of Bodofa Upendra Nath Brahma M.E. School, Murmela, District-Baksa in its meeting held on 03.11.2008 resolved to appoint the petitioner as a Science Teacher in the Bodo Medium of the said M.E. School. Accordingly, an appointment order was issued to her on 04.11.2008 by the Secretary cum Headmaster of the said M.E. School pursuant to which she on 04.11.2008 itself joined as a Science Teacher in the Bodo Medium Section of said Bodofa UN Brahma M.E. School during its venture stage.

4. It is stated that when the cases of teaching and non-teaching staff of the said Venture M.E. School were taken up for consideration for provincialisation under the provisions of the Assam

Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012, the School Managing Committee and its Headmaster wrongly incorporated petitioner's date of joining in the said Venture M.E. School as 04.07.2011 instead of 04.11.2008. As such, the respondent authorities while provincialising the service of teaching and non-teaching staff of the said school under the said 2011 Act in the Assamese as well as Bodo Medium vide order dated 02.09.2013 issued by the Director of Elementary Education, Assam, w.e.f. 01.01.2013, left the petitioner from the benefit of such provincialisation keeping the post of Science Teacher in the Bodo Medium Section of the said M.E. School as vacant.

5. Hence, this writ petition by the petitioner for a direction to the respondent authorities to consider her case for provincialisation as the Science Teacher in the Bodo Medium Section of Bodofa UN Brahma M.E. School w.e.f. 01.01.2013 as the services of her colleagues in the said M.E. School were earlier provincialised w.e.f. 01.01.2013 by the Director of Elementary Education, Assam vide order dated 02.09.2013.

6. Petitioner submitted that her actual date of joining in service in said M.E. School is 04.11.2008, while the said School was in venture stage.

7. The respondent No. 5, Headmaster of said Bodofa UN Brahma M.E. School on 01.03.2023 has filed an affidavit in the matter stating that the name of the petitioner has not been included in the UDISE of the said school and due to mistake in recording her date of joining in service in the said school, she was left out from provincialisation and stated further that the petitioner has joined her service in the said school on 04.11.2008.

8. Since petitioner's date of joining in service in the said M.E. School during its venture stage was recorded wrongly as 04.07.2011, which is after 01.01.2011, therefore, the District Scrutiny Committee (Elementary) in the District of Baksa (BTR) during the force of the said 2011 Act, did not recommend her case for provincialisation.

9. It is seen that the petitioner has filed this writ petition only on 09.06.2022 praying for a direction to the respondents herein for provincialisation of her service that too under the said 2011 Act, which is no longer in force.

10. It is to be noted herein that a Division Bench of this Court vide judgment and order dated 23.09.2016 passed in WP(C) No. 3190/2012 (*Chandan Kumar Neog Vs. State of Assam and others*) declared the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 amended

in 2012 as ultra vires and unconstitutional. Thereafter, the State Government in the Education Department w.e.f. 05.05.2017 brought into force the Assam Education (Provincialisation of Services of Teacher and Re-organization of Educational Institutions) Act, 2017 that was published in the Assam Gazette on 11.04.2017, which was subsequently amended in 2018.

11. Moreover, the name of the petitioner has also not been incorporated in the UDISE of the said school so as to consider her case for provincialisation in terms of the said 2017 Act, as amended in 2018.

12. Pursuant to a full Bench decision of this Court in the case of *Abdul Gafur Mondal Vs. State of Assam and Others* reported in 2015 (2) GLT 337, the State Government in the Education Department vide Notification No. ELC/WP(C) 2272/2013/403/194 dated 03.12.2015 as well as Notification No. ELC/ WP(C)2272/2013/403/196 dated 02.06.2016 constituted the Educational Tribunals in each of the districts of the district of Assam, including its Sixth Scheduled Districts of Assam to be chaired by the concerned District Judges as well as the concerned Additional District Judges of each district to adjudicate the disputes of the teaching and non-teaching staff amongst others towards the claim for provincialisation of their services, that are applicable for Elementary, Secondary and Higher Education Departments of the State.

13. After hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court is of the view that as a Writ Court in exercise of its power under Article 226 of the Constitution of India cannot decide and adjudicate the actual date of joining of the petitioner as a Science Teacher in the Bodo Medium of said Bodofa UN Brahma M.E. School during its venture stage, whether it is 04.11.2008 or 04.07.2011, which can only be considered by the concerned Tribunal by verification of records and recording evidence towards the claim of the petitioner for provincialisation of her service. Accordingly, the Court is not inclined to entertain this writ petition for the reasons above.

14. However, the petitioner may approach the appropriate Educational Tribunal for redressal of her grievance regarding her claim for provincialisation as a Science Teacher in the Bodo Medium Section of Bodofa UN Brahma M.E. School under BTC under the relevant provisions of the Act and Rules in force in that regard.

15. In the event of any such approach by the petitioner before the concerned Educational Tribunal regarding her claim for provincialisation, needless to say, the said Tribunal after hearing the

petitioner and the other relevant parties, on due verification of the records in original and taking necessary evidence, etc. shall pass necessary order in accordance with law pertaining to the claim of the petitioner for provincialisation of her service.

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

JUDGE

Comparing Assistant