

GAHC010115782016



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

Case No. : WP(C)/4491/2016

RANJIT DUTTA
S/O LT. CHANDRA DUTTA R/O VILL- MAGHNUAH, P.O. PADMAPUR, P.S.
BIHPURIA DIST. LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTEMNT, DISPUR GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19
DIST. KAMRUP M
ASSAM.

3:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DISTRICT CIRCLE
DIST.LAKHIMPUR
ASSAM
PIN - 787001.

4:THE DEPUTY COMMISSIONER

LAKHIMPUR
DIST. LAKHIMPUR
ASSAM PIN -787001.

5:THE HEADMASTER

SIMALUGURI GIRLS HIGH SCHOOL
LAKHIMPUR
P.O. SIMALUGURI GIRLS HIGH SCHOOL
LAKHIMPUR
P.O. SIMALAGURI
DIST. LAKHIMPUR
ASSAM
PIN - 784165.

6:THE DISTRICT SCRUTINY COMMITTEE
OF LAKHIMPUR DISTRICT
REP. BY ITS MEMBER SECRETARY
I.E. THE INSPECTOR OF SCHOOLS
LAKHIMPUR DISTRICT CIRCLE
LAKHIMPUR
ASSAM PIN - 787001.

7:THE SCHOOL MANAGING COMMITTEE
SIMALUGURI GIRLS HIGH SCHOOL
LAKHIMPUR
REP. BY ITS PRESIDENT
P.O. SIMALUGURI DIST. LAKHIMPUR
ASSAM
PIN - 784165

Advocate for the Petitioner : MR.N BORAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 24.03.2023

Heard Mr. N. Bora, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department, representing respondent nos.1, 2, 3 and 6 and Mr. G. Bokoliya, learned Govt. Advocate appearing for the respondent no.4. None appears on call for the respondent nos.5 and 7.

2. The case of the petitioner, in brief, is that he is a serving Assistant Teacher of Simaluguri Girls High School, Lakhimpur. He was appointed by the then Managing Committee of the school and he joined service on 25.05.1995 and at the relevant time, the petitioner was the 4th senior most Assistant Teacher of the school. The authorities in the Secondary Education Department had provincialised the service of the teaching and non-teaching staff of the school by order dated 22.09.2014. However, it is claimed that one Brinda Boruah, who was the then second Assistant Teacher of the school had expired on 28.08.2013, but her service was inadvertently provincialized by the said order. The petitioner claims that after the date of death of Brinda Boruah, the petitioner's candidature ought to have been considered as he was the third senior most Assistant Teacher of the school and his service ought to have been provincialised. It is submitted that on 05.01.2005, the petitioner had submitted a representation before the Director of Secondary Education, Assam (respondent no.2) for consideration of his case for provincialisation and the school Managing Committee had also adopted a resolution on 05.02.2016, appointing the petitioner in the post which had fallen vacant on the death of Brinda Boruah. As the claim of the petitioner has not been considered, he has approached this Court by filing this writ petition under Article 226 of the Constitution of India.

3. The learned standing counsel for the Secondary Education Department has referred to the case of *Purnabati Brahma Vs. The State of Assam & 6 Ors., WA 283/2019, decided on 13.11.2019* and it is submitted that the exercise of provincialisation, which was done earlier as per the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (2011 Act for short) has been set aside and thereafter, new enactments, being the

Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (2017 Act for short) was brought in place w.e.f. 11.04.2017. Hence, it is submitted that as per the law laid down in the said case, no relief can be given for provincialisation under the 2011 Act, which is not in force.

4. On considering the projection made by the learned counsel for the petitioner, the petitioner has *prima facie* satisfied the Court that had the respondent authorities considered that Brinda Boruah had expired on 28.08.2013, the service of the petitioner would have been provincialized as the 3rd senior most Assistant Teacher of the school. However, the service of Late Brinda Boruah, who had already expired, was provincialized.

5. Under such circumstances, the Court finds that this is an appropriate case to relegate the petitioner for having his case re-considered and/or decided by the District Scrutiny Committee regarding his entitlement of provincialisation of service as the 3rd senior most Assistant Teacher as on 22.09.2014, the date when the service of teaching and non-teaching staff of the Simaluguri Girls High School was provincialized.

6. Accordingly, the petitioner shall produce a certified copy of this order before the Deputy Commissioner, North Lakhimpur, Lakhimpur, who on receipt of the same, having regard to section 14 of the 2017 Act, shall consider the matter in accordance with law and shall place the case of the petitioner before the District Scrutiny Committee for considering of the entitlement of the petitioner for provincialisation of service in the event he meets the criteria under the said Act and to also consider if as on 22.09.2014, the petitioner was the 3rd

senior most Assistant Teacher of the school.

7. The District Scrutiny Committee is directed to decide the claim of the petitioner for provincialisation of his service within a period of 6 (six) weeks from the date of receiving certified copy of this order before the office of the Deputy Commissioner, North Lakhimpur, Lakhimpur. Consequential steps shall be taken within a further period of 2 (two) months thereafter.

8. Writ petition stands disposed of to the extent as indicted above.

JUDGE

Comparing Assistant