

GAHC010077542023



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

Case No. : WP(C)/4337/2021

MD SHAMSUL ALAM
S/O- ABDUS SATTER ALI
R/O- P.O. KHUDRAKUCHI PIN- 781315
DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-6

2:DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GHY-19

KAMRUP (M)
ASSAM

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA

DIST.- BARPETA
ASSAM

4:DY. COMMISSIONER
BARPETA

DIST.- BARPETA
ASSAM

5:MD. SHAHIDUR RAHMAN
VILL- BALIKURI N.C
P.O. BALIKURI
DIST.- BARPETA

ASSAM
PIN- 781319
6:MD. AYEN ALI BHUYAN
VILL- BALIKURI
P.O. BALIKURI
DIST.- BARPETA
ASSAM
PIN- 781319
7:NASIR UDDIN AHMED
VILL- BALIKURI
P.O. BALIKURI
DIST.- BARPETA
ASSAM
PIN- 781319

Advocate for : MR G BORDOLOI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

11/04/2023

Heard Mr. A Deka, learned counsel for the petitioner. Also heard Mr. P K Bora, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 3; Mr. G Bokalia, learned Government Advocate, Assam for the respondent No. 4 and Mr. D J Haloi, learned counsel for the respondent Nos. 5, 6 and 7.

Matter pertains to provincialisation of the service of the petitioner vis-à-vis the respondent Nos. 5, 6 & 7 under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* as amended.

Petitioner and the respondent Nos. 5, 6 & 7 were appointed as Teachers in Mazidvita M.E. Madrasa in the Mandia Education Block of District-Barpeta by its School Managing Committee during its venture stage.

The respondent No. 5 joined the said M.E. Madrasa on 23.01.1992, the respondent No. 6

joined the said M.E. Madrassa on 28.09.1999 and that both the respondent Nos. 5 & 6 are Graduates in Arts. The respondent No. 7 joined the said M.E. Madrassa on 02.06.2006, whereas the petitioner joined the said M.E. Madrassa on 02.01.1989. The qualification of the petitioner is F.M. in Arabic and that of the respondent No. 7 is Higher Secondary (Arts).

It is stated by the petitioner that though his name was recommended by the District Scrutiny Committee, Barpeta for provincialisation of his service under the provisions of said 2017 Act as amended, but in the list of eligible candidates for provincialisation that was published by the Directorate of Elementary Education, Assam, names of the respondent Nos. 5, 6 & 7 along with one Md. Mohir Uddin figured, whereas the name of the petitioner did not figure in the said list.

Being aggrieved with such deprivation from provincialisation of his service disregarding his seniority, the petitioner has preferred this writ petition.

Though, said Md. Mohir Uddin was made respondent No. 8 in the present proceeding, the 4th Assistant Teacher of said M.E. Madrassa, who was recommended for provincialisation by the State Level Scrutiny Committee, but pursuant to the order of the Court dated 28.09.2021, his name was struck off from the cause title of this writ petition.

The Court while issuing notice to the respondents on 28.09.2021 considering the provisions of Section 3(1)(xi) of the said 2017 Act as amended and the date of joining of the respondent Nos. 5, 6 & 7, in the interim, stayed the provincialisation of the respondent Nos. 6 & 7 until further order observing further that pendency of this writ petition shall not be a bar on the part of the respondent authorities to process the provincialisation of the service of the petitioner as a Social Studies Teacher in said Mazidvita M.E. Madrassa.

Being aggrieved with the said order dated 28.09.2021 passed earlier in this proceeding whereby the provincialisation of services of the respondent Nos. 6 & 7 was stayed, those respondents preferred the connected I.A. (Civil) No. 977/2023 for alteration/modification/vacation of the said order dated 28.09.2021.

Petitioner has annexed the copy of the UDISE data pertaining to the said M.E. Madrassa for the years 2017-2018 and 2019-2020 submitted by the Headmaster of the said M.E. Madrassa.

From the UDISE data of the year 2017-2018, it is seen that the petitioner joined the said M.E. Madrassa on 02.02.1989 and he was appointed for the subject of Arabic (33), who used to teach

Environmental Studies as the main subject and Arabic (33) as the 2nd main subject.

With regard to the respondent No. 5, he joined the said M.E. Madrassa on 23.01.1992 and was appointed for all subjects and was used to teach languages (2).

With regard to the respondent No. 6, he joined the said M.E. Madrassa on 28.09.1999 and was appointed for all subjects, who used to teach Social Studies (8) as the main subject and English as the 2nd main subject.

With regard to the respondent No. 7, said UDISE data of the year 2017-2018 reflects that he joined the said M.E. Madrassa on 02.06.2006 and was appointed for all subjects, who used to teach Mathematics as the main subject and Assamese as the 2nd main subject.

However, the UDISE data of the year 2019-2020 pertaining to the said M.E. Madrassa reflects that the petitioner was appointed for all subjects and he used to teach Environmental Studies as the main subject; the respondent No. 5 was appointed for all subjects and used to teach English and the Languages and the respondent No. 7 used to teach all subjects and used to teach English as the main subject.

The UDISE data of the year 2019-2020 pertaining to the said M.E. Madrassa also reflects that one Md. Mohir Uddin, whose name figured for provincialisation, who was made respondent No. 8 in the present proceeding, but later on, his name was struck off by the order of the Court dated 28.09.2021, joined the said M.E. Madrassa on 05.01.2007 and he is a Science Graduate Teacher of that Madrassa, who used to teach Science as the main subject and Mathematics as the 2nd main subject.

The Court prima-facie found that the respondent No. 5, Md. Sahidur Rahman was appointed as a Social Studies Teacher on 23.01.1992, whereas the respondent No. 6, Md. Ayen Ali Bhuyan was appointed as Social Studies Teacher on 28.09.1999 and the respondent No. 7, Nasir Uddin Ahmed was appointed on 02.06.2006, who was shown to be a teacher of Language and Social Studies in the said M.E. Madrassa.

The Court prima-facie found that if the respondent No. 6 is considered to be a Language Teacher of the said Madrassa, whose date of joining was 28.09.1999, then it was subsequent to the appointment of the petitioner, who joined the said school on 02.01.1989, where the petitioner was

teaching Environmental Studies and respondent No. 6 was also teaching Social Studies.

Finding a prima-facie case in favour of the petitioner, the Court by order dated 28.09.2021 accordingly stayed the provincialisation of the respondent Nos. 6 & 7 until further orders.

Mr. Haloi, learned counsel for the respondent Nos. 5, 6 and 7 submitted that the respondent Nos. 6 & 7 are not receiving any salary after the order dated 28.09.2021 passed earlier in the present proceeding.

We have seen that the UDISE data pertaining to the said M.E. Madrassa for the year 2017-2018 regarding the subjects taught by the petitioner as well as the respondent Nos. 5, 6 and 7 differs from the UDISE data of the year 2019-2020 of the same M.E. Madrassa.

Section 3(1)(xi) of the said 2017 Act reads 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 standard 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).

Section 14 of the 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."

The Hon'ble Supreme Court in the case of *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".

After considering the entire aspects of the matter and on hearing the parties, the petitioner is directed to prefer a statutory appeal before the Secretary in the Department of School (Elementary)

Education, Assam as provided under Section 14 of said 2017 Act **on or before 29.04.2023** along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary in the Department of School (Elementary) Education, Assam shall dispose of the said statutory appeal of the petitioner, with a reasoned order, within a period of 90 (ninety) days, after verification of all the relevant records of the said M.E. Madrassa, its relevant UDISE, appointment orders in original, their joining reports, subjects taught by each of them etc. and after giving an opportunity of hearing to the petitioner as well as the respondent Nos. 6 & 7, enabling them to place their case and relevant documents for necessary consideration, intimating them about the outcome of the said appeal.

Subject to the filing of the statutory appeal by the petitioner on or before 29.04.2023, the provincialisation of the respondent Nos. 6 & 7 in said Mazidvita M.E. Madrassa shall remain suspended till disposal of the appeal to be preferred by the petitioner.

The interim order dated 28.09.2021 passed earlier in this proceeding accordingly stands merged with this order.

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

JUDGE

Comparing Assistant