

GAHC010055622022



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

Case No. : WP(C)/2246/2022

MOZIBUR RAHMAN BARBHUIYA
S/O JARIF RAJA BARBHUIYA, R/O VILL-RAJYESWARPUR PT-III, P.O.-
AMALA, DIST- HAILAKANDI, ASSAM, PIN-788164

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O. AND DIST-HAILAKANDI
ASSAM
PIN-788151

4:THE DISTRICT SCRUTINY COMMITTEE
HAILAKANDI
P.O. AND DIST-HAILAKANDI
ASSAM
PIN-788151 (REPRESENTED BY ITS CHAIRMAN)

5:THE STATE LEVEL SCRUTINY COMMITTEE FOR ELEMENTARY
EDUCATION
DISPUR

GUWAHATI-6
REPRESENTED BY ITS CHAIRMAN
I.E. DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

6:THE DISTRICT MISSION COORDINATOR
SSA MISSION
HAILAKANDI
P.O. AND DIST-HAILAKANDI
ASSAM
PIN-788151

7:THE MISSION DIRECTOR
SSA MISSION
ASSAM
KAHILIPARA
GUWAHATI-1

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/4588/2021

MOZIBUR RAHMAN BARBHUIYA
S/O JARIF RAJA BARBHUIYA
RESIDENT OF VILLAGE RAJYESWARPUR PT III
PO AMALA
DIST HAILAKANDI
ASSAM
788164

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
EDUCATION ELEMENTARY DEPARTMENT
DISPUR GUWAHATI 06

2:THE DIRECTOR

ELEMENTARY EDUCATION ASSAM

KAHILIPARA

GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

HAILAKANDI

ASSAM

788151

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

LALA EDUCATION BLOCK

LALA

HAILAKANDI

ASSAM

788163

5:THE DISTRICT DEVELOPMENT COMMISSIONER AND CHAIRMAN

DISTRICT SCRUTINY COMMITTEE

HAILAKANDI

ASSAM

788151

6:THE DISTRICT MISSION CO ORDINATOR

SSA MISSION HAILAKANDI

ASSAM

788151

7:THE MISSION DIRECTOR

SSA MISSION ASSAM

KAHILIPARA

GUWAHATI 19

Advocate for : DR. B AHMED

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

30.11.2023

Heard Mr. SB Laskar, learned counsel for the petitioner. Also heard Mr. A Phukan, learned counsel for the Elementary Education Department, Government of Assam, Ms. DD Barman, learned counsel for the Deputy Commissioner, Hailakandi and Ms. P Das, learned counsel for the authorities under the SSA, Assam.

2. The petitioner Mozibur Rahman Barbhuiya had been provincialised as a Tutor in the East Rowarpar M.E. School under the *Assam Education (Provincialisation) of Services of Teachers and Re-organization of Educational Institution Act, 2017* (for short, Act of 2017). Later on, certain reports were available pursuant to the letter No.EPD/30/2021/8 dated 20.09.2021 in connection with the provincialisation of the services of the petitioner along with some other similarly situated persons. The report of the enquiry provided that the name of the petitioner did not appear in the DISE data from 2006-07 to 2011-12. Although the expression *hearing* appears in the first paragraph with reference to the heading *perused* and in the 3rd paragraph with reference to the heading *proceeding*, but, no material is available to arrive at a satisfaction that due procedure had been followed while the order dated 16.02.2022 had been passed. By the said order, upon arriving at a satisfaction on the basis of the report indicated above that the name of the petitioner did not appear in the DISE data from 2006-07 to 2011-12, the provincialisation meted in his favour had been cancelled. We are of the view that the cancellation of the provincialisation of the petitioner had been done in violation of the principles of natural justice. If the report relied upon by the authorities indicate that the name of the petitioner did not appear in the DISE data from 2006-07 to 2011-12 under the law there is also a requirement to issue a notice to the petitioner

informing about the same and allowing him to raise whatever contention the petitioner may intend to raise against such satisfaction arrived at by the authorities. On the limited ground of the cancellation being effected in violation of the principles of natural justice, the order dated 18.02.2012 is set aside. However, as the setting aside is made on a technical ground, the respondents are given the complete liberty to issue appropriate notice to the petitioner and thereafter take a decision as to whether his provincialisation should be continued or not or it warrants a cancellation.

3. Mr. A Phukan, learned counsel for the respondents in the Elementary Education Department by referring to the order impugned dated 18.02.2022 as well as by referring to certain communications that had been received in the meantime seeks to justify the cancellation on the facts of the matter. We are not expressing any view on the justification of the cancellation on the facts of the matter and as already indicated the interference is only on the technical ground of violation of the principles of natural justice, where no opportunity was given to the petitioner allowing him to espouse his cause on the matter.

4. As we have interfered only on the ground of violation of the principles of natural justice, we are not expressing anything on merit either in favour of the petitioner or in favour of the respondents on the merit of the issues raised. As it is a case, where the provincialisation may have been given to a person, who is otherwise not entitled for such provincialisation under the law, we direct the Director of Elementary Education Assam to forthwith issue the show-cause notice to the petitioner and thereupon after completing the proceeding by following the due procedure of law to pass a reasoned order thereon.

5. The issue raised in WP(C)No.4588/2021 wherein a grievance of non-payment of salary has been raised shall also be answered by the Director of Elementary Education Assam in the process as indicated above.
6. Both the writ petitions stand disposed of in the above terms.

JUDGE

Comparing Assistant