

GAHC010118262016



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

Case No. : WP(C)/5552/2016

MD. GOFFUR ALI KHAN
S/O. LT. RAHIM ALI, R/O. CHAKALIA GAON, P.S. MORAN, DIST.
DIBRUGARH, ASSAM, PIN. 785673.

VERSUS

THE STATE OF ASSAM and 8 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DIAPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIBRUGARH
ASSAM.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
KHOWANG

5:SRI PADUM NEWAR
ASSTT. TEACHER
RANGAGARAH ME SCHOOL
1 NO. RANGAGARH
P.O. SEPON

DIST. DIBRUGARH
ASSAM
PIN. 785673.

6:THE HEADMASTER
RANGAGARAH ME SCHOOL
RANGAGARH
P.O. TORAJAN
DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN. 785675.

7:THE PRESIDENT
MANAGING COMMITTEE RANGAGARAH ME SCHOOL
DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN. 785675.

8:SRI BABUL KURMI
EX-PRESIDENT
RANGAGARAH ME SCHOOL
VILL. NO.1 CHAKALIA
DIST. DIBRUGARH
ASSAM
PIN. 785673.

9:SRI HARI PRASAD NEWAR
ASSTT. TEACHER
RANGAGARAH ME SCHOOL
DIBRUGARH
DIST. DIBRUGARH
ASSAM
PIN. 785675

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

O R D E R

Date : 23.03.2023

None appears on call for the petitioner or for the respondent nos.5 to 8. However, Mr. A. Phukan, learned standing counsel for the elementary education department, representing respondent no.1 to 4 is present.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, who is aggrieved by non consideration of his case for provincialisation as Assistant Teacher at Rangagarh M.E. School, has prayed for quashing of the impugned memo dated 14.05.2013, by which names of four teachers were recommended for provincialisation as Head Master, two Assistant Teachers and a Science Teacher respectively and for a direction to the respondent authorities to recommend the name of the petitioner for provincialisation as Assistant Teacher.

3. The case projected by the petitioner is that he was appointed as an Assistant Teacher at Rangagarh M.E. School on 07.01.1989 by the Managing Committee. The formal permission of the Govt. to open the said school was issued on 20.05.1992 and on 07.05.1992, the Joint Director of Elementary Education, Assam informed the District Elementary Education Officer, Dibrugarh (DEEO) that as the Head Master was not graduate, permission cannot be

granted to the said school. It is projected that on receiving the said letter, the then Head Master had submitted a representation to the then DEEO to appoint Smti. Gunalata Handique as Head Mistress. It is also projected that Hari Prasad Newar (respondent no.9) had been appointed as Science teacher on 30.01.1995. It is claimed that on 30.09.2009, in the DISE Format, the name of petitioner appeared as Sl. No.4, whereas the name of the respondent no.5 appeared as Sl. No.6. In course of time, the Govt. had issued a notification for provincialisation of school and it is claimed that the then Managing Committee, without holding any general meeting cancelled the name of the petitioner and had recommended the name of the respondent no.5 for provincialisation. Despite representation submitted before the Deputy Commissioner, Dibrugarh, as nothing happened, the petitioner had approached this Court earlier and this Court by order dated 16.05.2013 passed in WP(C) 2573/2013, as an interim measure, directed the respondents not to provincialise the service of the respondent no.5. In the said writ petition, the respondent no.2 therein had filed an affidavit stating that the service of the respondent no.5 was provincialized by order dated 14.05.2013 and accordingly, this writ petition has been filed.

4. The learned standing counsel for the Elementary Education Department has submitted that the previous process of provincialisation was done under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, as amended. In the said context, it is submitted that the said Act has been struck down by this Court in the case of *Chandan Kumar Neog Vs. State of Assam*, 2016 5 GLT 286. Hence, it is submitted that the

dispute with regard to provincialisation shall now have to be taken by the competent authority prescribed under the Assam Education (Provincialisation of Services of Teachers and Reorganization of Educational Institutions) Act, 2017. It is submitted that under section 14 thereof, in respect of any recommendations of the District Scrutiny Committee, the appellate authority would be the State Level Scrutiny Committee. However, against recommendations made by the State Level Scrutiny Committee, the appellate authority would be the State Govt. in the concerned administrative department.

5. Accordingly, it is submitted that in this case, as a dispute has been raised with regard to the eligibility of the petitioner vis-a-vis respondent no.5 for provincialisation of service, the concerned appellate authority would take a decision in the matter.

6. In the affidavit-in-opposition filed by the respondent nos.6 and 7, i.e. the Head Master of the concerned school and the President of the Managing Committee of the said school, a stand is taken to the effect that an advertisement was made for appointing a Science Graduate Teacher having Mathematics, but except for the respondent no.5, no application was found and therefore, resolution was adopted by the Managing Committee and approval was taken from the respondent no.3, i.e. the DEEO, and the respondent no.5 was appointed as Science Graduate Teacher on 28.01.1995. Accordingly, it was submitted that the respondent no.5 has a better claim for provincialisation of service.

7. Be that as it may, as the issue relating to provincialisation of service of the petitioner vis-a-vis respondent no.5 requires examination of the school records and the communications from the concerned DEEO approving such appointments, the Court is of the considered opinion that this is a fit case to accept the submissions made by the learned standing counsel for the Elementary Education Department. Therefore, let the claim of the petitioner for provincialisation of service vis-a-vis respondent no.5 be decided by the competent authority under section 14 of the Assam Education (Provincialisation of Services of Teachers and Reorganization of Educational Institutions) Act, 2017, headed by Director of Elementary Education.

8. However, as the petitioner as well as the private respondents are absent on call, the Court is inclined to provide that the learned standing counsel for the Elementary Education Department shall transmit a downloaded copy of this order to the Director of Elementary Education, Assam, who would take up the matter as the appellate authority under section 14 of the Assam Education (Provincialisation of Services of Teachers and Reorganization of Educational Institutions) Act, 2017 and determine the claim of the petitioner for provincialisation of service vis-a-vis respondent no.5, whose appointment is assailed by the petitioner, and proceed to decide the same in accordance with law.

9. Before adjudicating the matter, it would incumbent on the Director of Elementary Education, Assam, sitting as an appellate authority, to ensure that a notice be served on the petitioner, namely, Md. Goffur Ali Khan, and the

respondent no.5, namely, Padum Newar and give them a reasonable opportunity to file their written statement with supporting documents, if any, and proceed to decide the matter within an outer period of 2 (two) months from the date the said authority is served with the communication from the learned standing counsel for the Elementary Education Department.

10. With the aforesaid observation, writ petition stands disposed of.

11. Parties are left to bear their own cost.

JUDGE

Comparing Assistant