

GAHC010127552019



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

**Case No. : WP(C)/4346/2019**

UTTAM KUMAR SARKAR  
S/O- JITENDRA NATH SARKAR, R/O- VILL KANURI PART-II, P.O-  
RATIADAHA, P.S- GOLAKGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
EDUCATION DEPTT, DISPUR, GHY- 6, DIST- KAMRUP(M), ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI- 19  
DIST- KAMRUP (M)  
ASSAM

3:THE DISTRICT SCRUTINY COMMITTEE (SECONDARY)  
DHUBRI  
REP. BY ITS CHAIRMAN  
THE DEPUTY COMMISSIONER  
DHUBRI  
DIST- DHUBRI  
PIN- 783301  
ASSAM

4:THE INSPECTOR OF SCHOOLS  
DHUBRI DISTRICT CIRCLE  
DHUBRI  
DIST- DHUBRI  
PIN- 783301  
ASSAM

5:THE HEADMASTER  
LAKHIMARI HIGH SCHOOL  
LAKHIMARI  
P.O- RATIADAHA  
P.S GOLOKGANJ  
DIST- DHUBRI  
PIN- 783301  
ASSAM

6:KRISHNA KANTA ROY  
ASSTT TEACHER  
S/O- LATE AMRIT ROY  
R/O- VILL GAIKHOWA  
P.S- GOLAKGANJ  
DIST- DHUBRI  
PIN- 783301  
ASSAM

7:MOZIBAR RAHMAN  
S/O- LATE BHIKA SK  
R/O- VILL- PUB KANURI  
P.O- GOLAKGANJ  
P.S- GOLAKGANJ  
DIST- DHUBRI  
PIN- 783301  
ASSA

**Advocate for the Petitioner** : MR. M J BARUAH

**Advocate for the Respondent** : MR. C BHATTACHARJEE (SC, SECONDARY EDU. DEPT., R-1,2,3,4)

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**01-03-2023**

Heard Mr. M. J. Baruah, learned counsel for the petitioner and Ms. D. Mushahary, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2 & 4. Also

heard Mr. P. Saikia, learned Government Advocate, Assam for the respondent No. 3, Mr. B. Sinha, learned counsel for the respondent No. 5 and Mr. A. R. Bhuyan, learned counsel for the respondent No. 6.

**2.** It is contended by the petitioner that on his application, the School Managing Committee of Lakhimari High School, Lakhimari, District-Dhubri during its venture stage, appointed him as an Assistant Teacher (Arts) as per the resolution adopted by it on 15.08.2003 and accordingly, he joined the service in said High School on 18.08.2003 as the 3<sup>rd</sup> Assistant Teacher of said High School.

**3.** During the force of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012, when the matter of provincialisation of the teaching and non-teaching staff of said High School was taken up for consideration, its Headmaster did not forward the name of the petitioner for consideration of provincialisation and instead of his name, the name of the respondent No. 6 was forwarded as 3<sup>rd</sup> Assistant Teacher who joined the said High School on 22.06.2005, much later than the petitioner.

**4.** It is also contended by the petitioner that the Headmaster of said School showing his name as a Craft Teacher forwarded the list for provincialisation under the provisions of said 2011 Act and since there was no post of Craft Teacher under the provisions of said 2011 Act, the petitioner was left out from the benefit of provincialisation.

**5.** The petitioner earlier approached this Court in WP(C) No. 729/2013 and the Court by order dated 18.02.2013 while disposing of said WP(C) No. 729/2013 directed the petitioner to file a representation before the concerned District Scrutiny Committee (Secondary) constituted under the said 2011 Act for redressal of his grievances with the observation that until disposal of said representation to be filed by the petitioner, financial grant and other service benefits shall not be disbursed to the respondent No. 5 therein (i.e., respondent No. 6 in this petition) as the 3<sup>rd</sup> Assistant Teacher (Arts) of Lakhimari High School.

**6.** The District Scrutiny Committee, Dhubri on 18.08.2013 disposed of the representation of the petitioner observing that he was appointed as a Craft Teacher in said High School in July, 2007, which the petitioner accepted and that the respondent No. 6 joined the said High School as an Additional Assistant Teacher (Arts) in June, 2005.

**7.** Pursuant to the same and on approval of the respondent authorities in the Secondary Education

Department, by order under No. PC/Sec/114/2013/71 dated 30.08.2013, the Director of Secondary Education, Assam provincialised the services of the teaching and non-teaching staff of said Lakhimari High School w.e.f. 01.01.2013 as per the provisions of said 2011 Act as amended in 2012 including the service of the respondent No. 6 as the 3<sup>rd</sup> Assistant Teacher without recommending the name of the petitioner.

**8.** Being aggrieved with the said order dated 30.08.2013, noted above, the petitioner preferred another writ petition being WP(C) No. 6719/2013.

**9.** The Court by order dated 13.11. 2017 disposed of said WP(C) No. 6719/2013 directing the Director of Secondary Education, Assam to pass a speaking order determining the seniority between the petitioner and the respondent No. 6 in service after considering all the relevant facts and records.

**10.** Pursuant to the said order dated 13.11.2017 passed in WP(C) No. 6719/2013, after considering the report of the then concerned District Scrutiny Committee and on hearing the concerned Inspector of Schools, the Headmaster of concerned School, the statement of the former President as well as the present President of the School Management and Development Committee of said school, considering that the petitioner remained absent in the school since August, 2013 and his contradictory statements and on declaring the said 2011 Act as ultra-vires of the Constitution of India, the Director of Secondary Education (DSE), Assam by a Speaking Order No. PC/CC/155/2018-A/201 dated 11.02.2019 rejected the claim of the petitioner for the purpose of provincialisation of his service considering it as not sustainable.

**11.** Being aggrieved with the said Speaking Order dated 11.02.2019 of the DSE, Assam, the petitioner has preferred this writ petition praying amongst others to set aside and quash the impugned Speaking Order dated 11.02.2019, noted above, and to cancel the provincialisation order of the respondent No. 6 against the sanctioned post of Assistant Teacher (Arts) in Lakhimari High School and the direction to the respondent authorities to provincialise his service as an Assistant Teacher (Arts) and to release all the benefits including the salary that was illegally denied to him.

**12.** It is already noted above that the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 amended in 2012 has been declared as ultra-vires and unconstitutional vide judgment and order dated 23.09.2016 passed in WP(C) No. 3190/2012 (*Chandan Kumar Neog Vs. State of Assam and others*).

**13.** Thereafter, the State Government in the Education Department brought into force the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 w.e.f.05.05.2017.

**14.** It is to be noted herein that a full Bench of this Court in the case of *Abdul Gafur Mondal Vs. State of Assam and others* reported in 2015 (2) GLT 337 directed the State Government in the Education Department to constitute Educational Tribunals in each of the districts of the State and accordingly, 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 districts which are chaired by the concerned District Judges as well as the concerned Additional District Judges of each district and are adjudicating the disputes of the teaching and non-teaching staff of such non-government educational institutions including the claim for provincialisation that are applicable for Elementary, Secondary and Higher Education Departments of the State.

**15.** With regard to the claim of the petitioner and to consider his prayer, evidence like, the resolution of the School Managing Committee of said Lakhimari High School whereby appointed the petitioner Vis-à-Vis the respondent No. 6, the attendance register and the financial records of said High School, etc. needs to be considered as evidences to determine the seniority between the petitioner Vis-à-Vis the respondent No. 6 for provincialisation and further the claim for provincialisation of said Lakhimari High School, District-Dhubri was brought under the provisions of said 2011 Act w.e.f. 01.01.2013, pursuant to the order dated 30.08.2013 issued by the Director of Secondary Education, Assam, the claim for provincialisation of service of the petitioner is on the ground of his service rendered in the said school prior to 15.08.2003 while it was a non-government educational institution.

**16.** In view of the above, the petitioner may approach the appropriate Educational Institution of the concerned district for redressal of his grievances regarding his claim for provincialisation considering his seniority in said Lakhimari High School, District-Dhubri Vis-à-Vis the respondent No. 6.

**17.** However, it is made clear that in the event of such approach by the petitioner before the concerned Educational Tribunal with a certified copy of this order, the said Educational Tribunal shall consider the case of the petitioner independently without being influenced by the impugned Speaking Order No. PC/CC/155/2018-A/201 dated 11.02.2019 passed by the Director of Secondary Education, Assam.

**18.** Such order shall be passed by the concerned Educational Tribunal after giving an opportunity of hearing to the petitioner as well as the respondent No. 6.

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

**JUDGE**

**Comparing Assistant**