

GAHC010260862022



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

Case No. : WP(C)/5127/2021

MALAYA DEKA
D/O LATE UPENDRA DEKA
R/O VILL. NIZ NAMATI
P.O. AND P.S. NIZ NAMATI
UNDER NALBARI DIST.
TEACHER OF KIRAN PATHAK M.E. SCHOOL
ASSAM
PIN 781355

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
ELEMENTARY EDUCATION DEPTT.
DISPUR
GUWAHATI 6

2:THE DEPUTY SECY. TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPTT.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19

4:THE DIST. SCRUTINY COMMITTEE
REPRESENTED THROUGH ITS CHAIRMAN

THE DEPUTY COMMISSIONER
BAKSA DIST. ASSAM
PIN

5:THE DIST. ELEMENTARY EDUCATION OFFICER

DIST. BAKSA
MUSHALPUR
ASSAM
PIN 781343

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
TIHU
BRAMA BLOCK
ASSAM
PIN 781346

7:THE HEAD MASTER
KIRAN PATHAK M.E. SCHOOL
VILL SARUKUCHIJAR
P.O. NIZ NAMTI DIST. BAKSA
ASSAM
PIN 781355

8:KAMESWAR DEKA
ASSTT. TEACHER OF KIRAN PATHAK
M.E. SCHOOL
VILL. SARUKUCHIJAR
P.O. NIZ NAMTI
DIST. BAKSA
ASSAM
PIN 781355

Advocate for : MRS A BUJARBARUAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27.03.2023

Heard Mrs. A Bujarbaruah, learned counsel for the petitioner and Mr. G Pegu, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2, 3, 5 & 6. Also heard Mr. P Saikia, learned Government Advocate, Assam for the

respondent No. 4.

Matter pertains to provincialisation of the service of the petitioner vis-à-vis that of the respondent No. 8.

Petitioner is a Graduate in Arts and also passed Pravin in Hindi from Assam Rastrabhasha Prasar Samiti, Guwahati.

The managing committee of Kiran Pathak M.E. School, Sarukuchijar, Niz-Namati, District-Baksa, erstwhile district of Nalbari, during its venture stage appointed the petitioner as an Assistant Teacher in said M.E. School on 10.01.1996. Pursuant to the same, the petitioner joined her service in the said venture M.E. School on 17.01.1996.

While the cases of the teaching staff of the said M.E. School was taken up for consideration for provincialisation under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended, the District Scrutiny Committee, District-Baksa disregarding her better claim, recommended the name of the respondent No. 8 for provincialisation of his service as a Language Teacher.

Being aggrieved, the petitioner has preferred this writ petition.

The Court while issuing notice to the respondents on 01.10.2021 finding that the petitioner is senior to the respondent No. 8 in service and that the service of the respondent No. 8 was provincialised as a Language Teacher on weighing the balance of convenience in favour of the petitioner and considering the irreparable loss that may occur to the petitioner, suspended the effect of provincialisation of the respondent No. 8 until further order, which is still in force.

Being aggrieved with the said interim order dated 01.10.2021 passed in the present proceeding, the respondent No. 8 has preferred the connected Interlocutory Application being I.A. (C) No. 3801/2022 praying to vacate the said order dated 01.10.2021.

The contention of the respondent No. 8 is that the District Scrutiny Committee, Baksa recommended his name for provincialisation that was approved and recommended by the State Level Scrutiny Committee and accordingly, the State Government in the Elementary Education Department accorded its concurrence, pursuant to which the Director of Elementary Education, Assam by an order No. EPD-16-Prov-UP (Act

2017)/2021/36 dated 05.02.2021 provincialised the service of the petitioner as a Tutor under the provisions of the said 2017 Act as amended and placed him in the Base school, namely, Jayaguri Lower Primary School in the Tihu-Barama Education Block of District-Baksa.

The respondent No. 8 also submitted that the District Scrutiny Committee, Baksa on due verification of the relevant documents placed by the Headmaster of the school and the authorities of said Kiran Pathak M.E. School recommended his name for provincialisation of his service under the provisions of the said 2017 Act and thereafter necessary verification was made by the State Level Scrutiny Committee with regard to him along with the name of Pulen Pathak, the Headmaster of the said M.E. School and one, Md. Jamal Ali, a Science Teacher of the said M.E. school as eligible for provincialisation and their names were published in the website of the Directorate of Elementary Education, Assam for provincialisation of their services under the provisions of said 2017 Act.

From the affidavit filed by the respondent No. 8 it is seen that the recommendation of the District Scrutiny Committee, Baksa regarding provincialisation of the services of the respondent No. 8 as well as the other two Teachers of the said M.E. School was on the basis of educational and other documents and records submitted by the Headmaster of the said M.E. School on 03.06.2017, wherein the respondent No. 8 has been shown of teaching Assamese and Social Studies to the students of the said M.E. School, whereas the petitioner has been shown teaching Hindi language and further, Pulen Pathak, the Headmaster of the said M.E. school has been shown of teaching Assamese and English to the students of the said M.E. School.

Respondent No. 8 submitted that since Pulen Pathak has already been considered for provincialisation as a Language Teacher and he being a Social Studies Teacher as well as Jamal Ali being a Science Teacher, there is no scope for provincialisation of service of the petitioner as a Hindi Language Teacher since said Pulen Pathak, a Language Teacher of the said M.E. School is senior to the petitioner.

However, from the Inspection Report submitted by the Block Elementary Education Officer, Tihu-Barama Education Block vide No. BEEO//T-B/08-09/INSPECTION-4/3830 dated 11.03.11 (Annexure-I) it is seen that the petitioner has been shown as a Hindi Teacher and the respondent No. 8 as an Assistant Teacher, whereas Pulen Pathak is shown as the

Headmaster and Jamal Ali as a Science Teacher.

Further, the order of the District Elementary Education Officer, Baksa dated 13.06.2011 (Annexure-J) reflects that the petitioner is a Hindi Teacher having passed Graduation and Pravin, Pulen Pathak as Headmaster with Graduation, respondent No. 8 as Assistant Teacher who passed Higher Secondary Examination and said Jamal Ali as Science Teacher with B.Sc serving in the said Kiran Pathak M.E. School, Baksa.

The DISE data of said Kiran Pathak M.E. School vide DISE Code No. 18240303004 for the year 2017-18, annexed to this petition reflects that the petitioner belonging to Scheduled Caste category and a Teacher of said Kiran Pathak M.E. School teaching all the subjects and the main subject she used to teach is language.

Similarly, for the respondent No. 8 the said DISE data also reflects that he used to teach all the subjects in said Kiran Pathak M.E. School and the main subject he used to teach is language.

Moreover, the date of joining of the petitioner as per the said DISE data of 2017-18 with regard to Kiran Pathak M.E. School reflects as 17.01.1996, whereas that of the respondent No. 8 as 12.09.1999.

Respondent No. 8 could not place anything before the Court against the said DISE data maintained by the authorities in the SSA, Assam with regard to said Kiran Pathak M.E. School for the year 2017-18, annexed to this petition as Annexure-K.

Considering said DISE data of Kiran Pathak M.E. School for the year 2017-18 as well as the report submitted by the Headmaster of said M.E. School regarding the status of the Teachers more particularly with regard to the Headmaster of the said M.E. School, Pulen Pathak and that of the respondent No. 8 are found to be not in conformity with the said DISE data of Kiran Pathak M.E. School for the year 2017-18.

Section 14 of said 2017 Act provides for 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 have 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 hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the petitioner to submit a statutory appeal before the Secretary to the Government of Assam in the Department of School Education on or before 06.04.2023 as provided under Section 14 of said 2017 Act as amended, along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto as well as all the relevant documents and testimonials regarding her appointment order etc. that are self attested, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner as directed above, within the time so specified, the Secretary to the Government of Assam in the Department of School Education on verification of the relevant records including the DISE/UDISE data of said Kiran Pathak M.E. School, Baksa shall dispose of the said statutory appeal of the petitioner with a reasoned order within a period of 90 (ninety) days after giving an opportunity of hearing to the petitioner as well as the respondent No. 8, intimating them about the outcome of her said appeal.

In the event of filing such statutory appeal by the petitioner within the time specified above, the provincialisation of the service of the respondent No. 8 shall remain suspended until the disposal of the appeal of the petitioner.

While considering the said appeal of the petitioner, if the appellate authority comes to the finding that the service of the respondent No. 8 had been duly provincialised, he shall be paid his salaries and other service benefits w.e.f. from the date of provincialisation of his service.

It is also made clear that if in such process, while considering the appeal, the petitioner is found eligible for provincialisation in terms of the provisions of said 2017 Act,

noted above, the respondent authorities in the Elementary Education Department shall provincialise her service from the date of provincialisation of the other teachers of said Kiran Pathak M.E. School, District-Baksa giving her all such financial and other service benefits as per her entitlement in accordance with law, provincialising her service under the said 2017 Act as amended.

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

JUDGE

Comparing Assistant