

GAHC010136872021



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

Case No. : WP(C)/4578/2021

PRASHANNA KUMAR DUTTA
S/O- LT. MOHI RAM DUTTA, R/O- VILL- BETONI PHATER, P.O. NAOJAN,
DIST.- GOLAGHAT, PIN- 785601 (ASSAM)

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. DEPTT. OF ELEMENTARY EDUCATION,
GOVT. OF ASSAM, DISPUR, GHY-06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY-19
KAMRUP (M)
ASSAM

3:THE DISTRICT SCRUTINY COMMITTEE
GOLAGHAT DISTRICT
REP. BY DY. COMMISSIONER
GOLAGHAT DISTRICT

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
GOLAGHAT DISTRICT

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
SOUTH BLOCK
GOLAGHAT DISTRICT

6:BIREN TANTI
TUTOR (ERSTWHILE HEADMASTER) GYANDEEP M.E.SCHOOL
VILL- JANATA PATHAR
P.O. NAOJAN

DIST.- GOLAGHAT
PIN- 785604 (ASSAM)

7:CHAYAMONI GOGAI
TUTOR
GYANDEEP M.E.SCHOOL
VILL- JANATA PATHAR
P.O. NAOJAN
DIST.- GOLAGHAT
PIN- 785604 (ASSAM)

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

12/04/2023

Heard Mr. B K Das, learned counsel for the petitioner. Also heard Mr. P K Bora, learned Standing counsel, Department of School (Elementary) Education for the respondent Nos. 1, 2, 4 & 5 and Ms. D Das Barman, learned Government Advocate, Assam for the respondent No. 3.

The petitioner as well as the respondent Nos. 6 & 7 were appointed as Assistant Teachers in Gyandeep M.E. School, Nowjan in the South Education Block of District-Golaghat.

It is stated by the petitioner that without considering his better claim, the respondent authorities illegally provincialised the services of the respondent Nos. 6 & 7 under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* as amended.

It is submitted by the petitioner that he joined the said M.E. School in the year 1994, whereas the respondent Nos. 6 & 7 joined the said school in the year 2003.

It is also stated that the petitioner used to teach Social Science to the students of the said school, but the respondent authorities violating the provisions of Section 3(1)(xi) of the said 2017 Act

provincialised the services of the respondent Nos. 6 & 7 as Tutors on 04.02.2021.

Being aggrieved, the petitioner has filed this writ petition on 01.09.2021.

The DISE data for the session 2009-2010 pertaining to said Gyandeep M.E. School, Nowjan submitted by the Headmaster of the said school reflects that the respondent Nos. 6 & 7 used to teach Languages and that in addition to language, the respondent No. 6 also used to teach all subjects, whereas the petitioner used to teach Science.

It is also placed before the Court that service of one Probhakar Rajbangshi was also provincialised, who used to teach Mathematics in the said M.E. School.

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 hearing the learned counsels for the parties and considering the entire aspects of the matter, the petitioner is directed to prefer a statutory appeal before the Director of Elementary Education, Assam being the Chairman of the State Level Scrutiny Committee as provided under Section 14 of said 2017 Act **on or before 02.05.2023** 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 said Director being the Chairman of the State Level Scrutiny Committee 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 and

after giving an opportunity of hearing to the petitioner as well as the respondent Nos. 6 & 7, enabling them to place the relevant documents for necessary consideration, intimating them about the outcome of the said appeal.

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

JUDGE

Comparing Assistant