

GAHC010142322021



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

Case No. : WP(C)/4652/2021

ABDUL REZZAK
S/O- ABDUL MANNAN, VILL- GUNAIPANI, P.O. CHIRAKUTI BAZAR, P.S.
FAKIRGANJ, DIST.- DHUBRI, ASSAM PIN- 783330

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2:THE STATE LEVEL SCRUTINY COMMITTEE
REP. BY THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
REP. BY ITS CHAIRMAN CUM DY. COMMISSIONER OF DHUBRI DISTRICT
ASSAM
PIN- 783301

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 783301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
SOUTH SALMARA
DIST.- DHUBRI
ASSAM
PIN- 783127

7:MD. CHAN MIAH
S/O- LT. IMAN ALI
VILL- TARANGAJHAR
P.O. JAMADARHAT
P.S. FAKIRGANJ
DIST.- DHUBRI
ASSAM
PIN- 783330

8:ROBIAL HOQUE
S/O- LT. NISHAN ALI
VILL- GUNAIPANI
P.O. CHIRAKUTI BAZAR
P.S. FAKIRGANJ
DIST.- DHUBRI
ASSAM
PI- 78333

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

05.01.2023.

Heard Mr. M Ali, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2, 3, 5 & 6. Also heard Ms. D Das Barman, learned Government Advocate, Assam for the respondent No. 4 as well as Mr. D P Chaliha, learned Senior counsel assisted by Ms. M Roy, learned counsel for the private respondent No 7.

The case of the petitioner is that the Headmaster cum Secretary of Gunaipani M.E. Madrassa, Chirakuti under the South Salmara Education Block of District-Dhubri

pursuant to decision of the Managing Committee of the said school dated 13.09.2009 appointed him as the 2nd Assistant Teacher in said M.E. Madrassa on 13.09.2009, while it was in the venture stage. Accordingly, the petitioner joined the said service on 14.09.2009 and is serving in the said M.E. Madrassa till date.

The petitioner passed Higher Secondary Examination in Arts in the year 2005 under the Assam Higher Secondary Education Council and has also obtained two years Diploma in Elementary Education from the National Institute of Open Schooling (NIOS) in the year 2019.

The petitioner stated that though the District Scrutiny Committee, District-Dhubri recommended his name along with three others for provincialisation of their services under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 as language teacher but the respondents in the Elementary Education Department provincialised only three teachers of the said Madrassa as Tutors, disregarding the better claim of the petitioner.

Being aggrieved, the petitioner has preferred this writ petition on 07.09.2021 challenging the order of provincialisation of the respondent Nos. 7 & 8 stating that the respondent No. 7 being the Headmaster of said venture M.E. Madrassa illegally forwarded the proposal to the District Scrutiny Committee showing the petitioner to be a Language Teacher, though he is serving as the 2nd Assistant Teacher teaching Social Science to the students of the said M.E. Madrassa.

During the deliberation of the matter, the respondents in the Elementary Education Department after obtaining information from the Office of the Mission Director, Samagra Shiksha, Assam placed before the Court that the name of the petitioner has been regularly reflected in the status of teachers of Gunaipani M.E. Madrassa, District-Dhubri as per DISE/UDISE (NIEPA DISE) database from 2010-11 to 2020-21.

The respondent No. 7 has filed an affidavit in the matter stating that the case of the petitioner was considered by the District Scrutiny Committee, District-Dhubri and

was recommended for provincialisation under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 as the 2nd Language Teacher. However, the respondents in the Elementary Education Department provincialised the service of only one Language Teacher excluding the petitioner, as the other Language Teacher is senior to the petitioner in service.

The Court after hearing the learned counsels for the parties on 20.09.2021 while issuing notice to the respondents passed an interim order not to give effect of provincialisation of the respondent No 7 until further order, which is still in force.

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.”

As there is a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Secretary, Department of School (Elementary) Education, Assam under Section 14 of said 2017 Act for redressal of his grievances.

Such appeal shall be preferred by the petitioner on or before 31.01.2023 along with the certified copy of this order, a copy of this writ petition including the Annexures appended thereto before the concerned Secretary, noted above, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam within the time so specified above, the concerned appellate authority shall dispose of the said statutory appeal of the petitioner within a period of 90 (ninety) days from the date of its receipt with a reasoned order, after verification of the relevant records, documents and giving an opportunity of hearing to the petitioner as well as the respondent Nos. 7 and 8 and

intimating the petitioner about the outcome of his said appeal.

Subject to filing such statutory appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam on or before 31.01.2023, as directed above, in terms of the interim observation made by the Court on 20.09.2021 in the present proceeding, the provincialisation of the respondent No. 7 under the provisions of the said 2017 Act shall remain suspended, till such disposal of the statutory appeal of the petitioner.

However, it is made clear that if on hearing the petitioner and the respondent Nos. 7 & 8 and on scrutiny of the documents etc., the concerned statutory appellate authority comes to the determination that the respondent No. 7 was duly provincialised following the provisions of the said 2017 Act, the respondent authorities shall pay his arrear as well as regular salary from the date of giving effect of provincialisation of the service of the said respondent No. 7.

In case, after such hearing the said statutory appellate authority comes to the conclusion that the petitioner's service should have been provincialised following the provisions of the said 2017 Act, then the respondent authorities shall provincialise his service from the date of provincialisation of the other teachers of said Gunaipani M.E. Madrassa, Chirakuti, South Salmara, District-Dhubri and shall pay him his arrear as well as regular salary from the date of giving effect of provincialisation of the service of the petitioner.

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

JUDGE

Comparing Assistant