

GAHC010111392021



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

Case No. : WP(C)/5085/2021

BOLEN DOLEY
S/O- LATE MALONG DOLEY
R/O- VILL.- KUMALIA CHAPORI GAON
P.O. JHANJIMUKH
P.S. TEOK
DIST.- JORHAT
ASSAM
PIN- 785112.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY
DEPARTMENT OF ELEMENTARY EDUCATION
GOVT. OF ASSAM
DIPSUR
GHY-06.

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

3:THE DISTRICT SCRUTINY COMMITTEE
JORHAT DISTRICT
REP. BY DEPUTY COMMISSIONER JORHAT DISTRICT.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
JORHAT DISTRICT

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
CENTRAL JORHAT
DIST.- JORHAT.

6:MINISH MOHAN KIRON PEGU
(ERSTWHILE HEAD MASTER) TUTOR BRAHMAPUTRA UPATYAKA MISSING
ME SCHOOL
VILL.- SAGUNPARA (B)
P.O. JHANJIMUKH
P..S TEOK
DIST. JORHAT
ASSAM
PIN- 785112.

7:NIKHIL NEOG
TUTOR
BRAHMAPUTRA UPATYAKA MISSING ME SCHOOL
VILL.- SAGUNPARA (B)
P.O. JHANJIMUKH
P..S TEOK
DIST.- JORHAT
PIN- 785112.

Advocate for : MR. B K DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-05-2023

Heard Mr. B. K. Das, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School Education for the respondent Nos. 1, 2, 4 and 5. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.3 as well as Mr. J. Payeng, learned counsel for the respondent Nos. 6 and 7.

2) It is stated that pursuant to the resolution dated 01.01.1986, the Headmaster-cum-Secretary of Brahmaputra Upatyaka Missing ME School under Central Jorhat Education Block of Jorhat District appointed the petitioner as an Assistant Teacher in the said School during its venture stage. Accordingly, the petitioner joined the said

School on 01.01.1986 and since then, the petitioner is serving in the said School and teaching Assamese and English to its students.

3) The authorities of the said School appointed the respondent No.6 in the said School as an Assistant Teacher on 01.01.1994, who is teaching all subjects to its students, whereas, the respondent No.7 who was appointed in the said School on 01.01.1995 is teaching all subjects and Language to its students.

4) While the cases of teaching staff of the Venture Educational Institutions were 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 (Elementary), Jorhat recommended the name of the respondent No.6 as Headmaster of the said School and the name of the respondent No.7 as Language Teacher for provincialisation, disregarding the better claim of the petitioner on the basis of which, the names of the respondent Nos. 6 and 7 have been uploaded in the website of the Directorate of Elementary Education, Assam as eligible for provincialisation under the said 2017 Act.

5) The UDISE data for the year 2017-18 of said Brahmaputra Upatyaka Missing ME School annexed to this writ petition clearly reflects that the respondent No.6 who joined the said School on 01.01.1994 is teaching all subjects, whereas, the respondent No.7, who joined the said School on 01.01.1995 is teaching Language.

6) By order dated 05.02.2021 issued by the Director of Elementary Education, Assam the services of the respondent Nos. 6 and 7 have been provincialised as Tutors under the said 2017 Act.

7) While issuing notice to the respondents, the Court by order dated 30.09.2021 provided that until further order, effect of provincialisation should not be granted to both the private respondent Nos. 6 and 7, namely, Minish Mohan Kiron Pegu and Nikhil Neog, respectively, which is still in force. However, the respondent Nos. 6 and 7 have

not filed any affidavits in the matter.

8) Being aggrieved, the petitioner has preferred this writ petition.

9) Section 3(1) (xi) of said 2017 Act, as amended provides as follows:-

In case of Venture Upper Primary School there shall be minimum three teachers or tutors at least one teacher each for (a) Science and Mathematics (b) Social Studies and (c) Languages:

Provided that for additional posts it shall be considered in accordance with the norms and standards stipulated in the Schedule under Sections 19 and 25 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009).

10) Section 14 of 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.”

11) The Hon'ble Supreme Court in the case of *the 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.”

12) 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 as provided under Section 14 of said 2017 Act as amended, on or before **25.05.2023** for redressal of his grievances along with a certified copy of this order, a copy of this writ petition including the Annexures appended thereto obtaining necessary acknowledgement from the said authority in that regard.

13) In the event of filing of such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam as directed above, within the time so specified, the said authority on verification of relevant records in original and after giving an opportunity of hearing to the petitioner as well as the respondent Nos. 6 and 7 shall dispose of the said appeal of the petitioner within ninety days from the date of its receipt by a reasoned order intimating the petitioner as well as the respondent Nos. 6 and 7 about the outcome of his said appeal.

14) In the event of filing of such appeal by the petitioner before the authority concerned within the time so specified, the order dated 30.09.2021 passed by the Court staying the benefit of provincialisation of the respondent Nos. 6 and 7 shall remain in force.

15) However, if the petitioner fails to prefer the appeal before the authority within the time so specified, the order dated 30.09.2021 passed by the Court staying the benefit of provincialisation of the respondent Nos. 6 and 7 shall stand vacated.

16) With the above observation and direction, this writ petitions stands disposed of.

JUDGE

Comparing Assistant