

GAHC010149372021



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

Case No. : WP(C)/4878/2021

JYOTSNA ROY
W/O SRI DINESH CHANDRA ROY
VILLAGE AND PO BIDYARDABRI (PART III) PS GOLAKGANJ, DIST
DHUBRI, ASSAM 783335

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE
GOVT.OF ASSAM, EDUCATION DEPARTMENT (ELEMENTARY)
DISPUR,ASSAM, 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM

4:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI
REPRESENTED BY ITS CHAIRMAN
DHUBRI, ASSAM

5:RAMJAN ALI KORANI
S/O- LT. PIRBAKAS KORANI
VILL.- KANURI
P.O.- BISHKHOWA
DIST.- DHUBRI
ASSAM, PIN- 783334

Advocate for the Petitioner : MR. P K DEKA
Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

01-03-2023

Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Ms. N. Phukan, learned standing counsel Elementary Education Department appearing on behalf of respondent Nos. 1, 2 & 3 and Ms. D.D. Barman, learned Government Advocate for respondent No. 4.

The petitioner was appointed as Hindi Teacher in Paikartary M.E. Madrassa on 22-04-1993 to which post he joined on 24-04-1993.

The petitioner is aggrieved by the provincialisation of the respondent No. 5 on the ground that he is the most eligible language teacher, being the senior most, to be provincialised under the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 (for short, 'Act of 2017'). However, the District Level Committee by Notification dated 04-02-2021, issued by the Director, Elementary Education Department, provincialised the service of the respondent No. 5 as a tutor in Paikartari M.E. Madrassa and the case of the petitioner was not considered.

The DISE Code for the academic year 2017-18 indicates that the date of birth of the respondent No. 5 is 07-02-1959, which clearly indicates that he attained the age of 60 years/superannuation on 07-02-2019.

I have also perused the affidavit-in-opposition, particularly paragraph 7 therein, filed by the respondent No. 2, which states that Section 21(1) of the Act of 2017, provides that for the purpose of provincialisation of service of the teachers and tutors under the Act of 2017, the Government shall create and sanction

such number of ex-cadre posts which shall be personal to the incumbents. These personal posts shall stand abolished on cessation of the services of the teachers for any reason whatsoever including retirement, resignation, death etc. Therefore, the post held by the respondent No. 5 has already been abolished after his retirement.

The service of the respondent No. 5 was provincialised by Notification dated 04-02-2021, i.e., after he had attained the age of superannuation. Therefore, in the considered opinion of this Court, Section 21(1) of the Act of 2017 has no application in the case in hand.

It appears that the provincialisation of respondent No. 5 was done in a mechanical manner without any application of mind. In fact, the respondent should have considered the case of the petitioner for provincialisation.

Accordingly, the matter is remanded to the respondent authorities, particularly, the respondent No. 2 to consider the matter afresh after due verification, for provincialisation of service of the petitioner. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

With the above observations and directions, this writ petition stands disposed of. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant