

GAHC010152182021



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

Case No. : WP(C)/5028/2021

AFRUZA KHATUN
W/O- GAFUR ALI ZOTDAR, VILL- GOSSAIDUBI HINDUPARA, P.O.
GOURNAGAR, P.S. LAKHIPUR, DIST.- GOALPARA, ASSAM, PIN- 783132

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT. DISPUR GHY-6

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM-CUM-CHAIRMAN
STATE SCRUTINY COMMITTEE
ASSAM KAHILIPARA
GHY-19

4:THE DY. COMMISSIONER
GOALPARA-CUM-CHAIRMAN
DISTRICT LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
GOALPARA P.O. AND P.S. GOALPARA
DIST.- GOALPARA ASSAM PIN- 783101

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER-CUM- MEMBER
SECRETARY
DISTRICT LEVEL SCRUTINY COMMITTEE
GOALPARA P.O. AND P.S. GOALPARA
DIST.- GOALPARA ASSAM PIN- 783101

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIPUR P.O. AND P.S. LAKHIPUR
DIST.- GOALPARA ASSAM PIN- 783129

7:NASHIR UDDIN AHMED
S/O- LT. KADAM ALI
VILL- GOSSAIDUBI HINDUPARA
P.O. GOURNAGAR
P.S. LAKHIPUR
DIST.- GOALPARA (ASSAM)
PIN- 783132

8:SHAMSUDDIN AHMED
S/O- LT. SOBUR UDDIN
VILL- GOSSAIDUBI MUSLIMPARA
P.O. GOURNAGAR P.S. LAKHIPUR
DIST.- GOALPARA (ASSAM)
PIN- 78313

Advocate for the Petitioner : MR. A F N U MOLLAH
Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-01-2023

Heard Mr. A. F. N. U. Mollah, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education for the respondent Nos. 1, 3, 5 and 6. Also heard Mr. S. Hoque, learned counsel for the respondent No.7.

Matter pertains to non-consideration of provincialisation of service of the petitioner under the provisions of *the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended in 2018.

The petitioner as well as the respondent Nos. 7 and 8 were appointed as Assistant Teachers in Gossaidubi M.E. Madrassa, in Lakhipur Education Block of Goalpara District, during its venture stage.

It is submitted by the petitioner that the District Scrutiny Committee for Elementary Education of Goalpara District recommended the names of respondent No.7 as Headmaster and that of the respondent No.8 as Teacher of Social Studies, name of the petitioner as Language Teacher, one Afzal Hussain as Science and Mathematics Teacher and another Joynal Abedin as Additional Teacher for provincialisation of their services under the said 2017 Act.

However, the State Level Scrutiny Committee recommended the names of the respondent No.7 as its Headmaster, one Afzal Hussain as Science and Mathematics Teacher, respondent No.8 as Social Studies Teacher for provincialisation of their services as Tutors under the provisions of said 2017 Act.

Being aggrieved with such action on the part of the respondent authorities in provincialising the services of the respondent Nos. 7 and 8, disregarding her better claim, the petitioner has preferred this writ petition.

Petitioner submitted that she and the respondent No.8 joined their services on the same date i.e., on 03.03.1994 and that the respondent No.8 retired from service on attaining the age of superannuation, much prior to provincialisation of his service under the said 2017 Act.

Petitioner has also placed before the Court that the respondent No.7, who is also a Language Teacher joined the said School on 11.06.1996, much later than her.

The Court while issuing notice to the respondents herein by order dated 28.09.2021 considered the fact that service of the respondent No.7 was provincialised as a Language Teacher and that the District Scrutiny Committee, Goalpara also recommended the name of the petitioner as Language Teacher. The Court also found that if the respondent No.7 is considered to be a Language Teacher, then the petitioner stands senior to him, as her date joining in service is 03.03.1994, whereas, that of the respondent No.7 is 11.06.1996. As such, by the said order dated 28.09.2021 the Court in the interim directed the respondent authorities not to give

effect of the order of provincialisation of respondent No.7 until further order. The said order is still in force.

The respondents in the Elementary Education Department as well as the private respondent No.7 have filed their affidavits in the matter, to which the petitioner has also filed her replies.

Petitioner also placed before the Court that the Director of Elementary Education, Assam who is also the Chairman of the State Level Selection Committee for Elementary Education under the said 2017 Act in his affidavit filed in the matter on 21.09.2022 categorically stated that the service of the respondent No.7 has been recommended for provincialisation following the sequence as forwarded by the District Scrutiny Committee, Goalpara, where the name of the said respondent No.7 was at the top, Srl. No.i, whereas, that of the petitioner was at Srl. No.iv.

Section 3 (1) (xi) of said 2017 Act 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).

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."

The respondent No.7 during the deliberation of the matter has placed a copy of the order of a Division Bench of this Court passed on 17.08.2022 in WA No. 228/2022

stating that the present case is covered by the said order dated 17.08.2022 whereby the person aggrieved therein like the petitioner was directed to approach the appropriate Education Tribunal for redressal of his grievances.

The matter in dispute in said WA relates to provincialisation of service of respondent No.8 therein, Tutor of Jorshimuli Mahabir Pathar L.P. School disregarding the claim of provincialisation of the writ appellant Taj Uddin Ahmed, a Teacher of Jorshimuli Mahabir Pathar M.E. Madrassa.

But in the present case, the name of the petitioner was recommended by the concerned District Scrutiny Committee for provincialisation of her service. It is the State Level Selection Committee who did not consider her case for provincialisation under the said 2017 Act. Therefore, the Court is of the opinion that the order of the Hon'ble Division Bench dated 17.08.2022 passed in WA No.228/2022 is not applicable to the present case.

After hearing the learned counsels for the parties and considering the entire aspect of the matter, the petitioner is directed to prefer an appeal before the Secretary, Department of School (Elementary) Education on or before **31.01.2023** along with a certified copy of this order with his memo of appeal and the relevant documents, obtaining necessary acknowledgement 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 within the time so specified, the Secretary concerned after hearing the petitioner, the respondent No.7 and other authorities including the District Elementary Education Officer, Goalpara and on verification of the relevant records in original, shall dispose of the appeal of the petitioner within a period of 90 (ninety) days from the date of receipt of such appeal.

It is also observed that in the event of filing of such appeal by the petitioner within the said specified period of time, the interim order passed earlier by the Court

on 28.09.2021 – “*not to give effect of the order of provincialisation of respondent No.7*” shall remain in force, till disposal of the said appeal of the petitioner.

However, failure on the part of the petitioner to prefer such appeal within the time so specified i.e., on or before 31.01.2023, the said order dated 28.09.2021 shall stand automatically vacated.

On verification of records and on considering the entire aspects of the matter, if the concerned appellate authority comes to the conclusion that the services of the respondent No.7 was duly provincialised, he shall be paid his arrear as well as the regular salary, by giving effect of provincialisation of his service under the said 2017 Act, if the respondent No.7 is found to be regularly working during the said period.

Similarly, if the concerned appellate authority after hearing the parties comes to the conclusion that it is the petitioner, whose service should have been provincialised, her service shall be provincialised under the said 2017 Act and she shall be paid her salary from the date when the other Teachers of the said School was provincialised along with her current regular salaries, if she is found to be working regularly.

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

JUDGE

Comparing Assistant