

GAHC010153142022



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

Case No. : WP(C)/5068/2022

SUNIL NATH
S/O LT. AMULYA NATH,
VILL.- BHAIKABPUR,
P.O.- SILABALI,
P.S.- SILAPATHAR,
DIST.- DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI- 6, ASSAM.

2:THE JOINT SECRETARY TO THE GOVT OF ASSAM EDUCATION
DEPARTMENT (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI- 06.

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

4:THE DEPUTY DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY- 19
ASSAM.

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE (DLSC)
REP. BY DEPUTY COMMISSIONER
PIN- 787057

ASSAM

Advocate for the Petitioner : MS. S DOLEY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

04/04/2023

Heard Ms. S Doley, learned counsel for the petitioner. Also heard Mr. B Kaushik, learned Standing counsel, Department of School Education for the respondent Nos. 1 to 4 and Ms. D Das Barman, learned Government Advocate, Assam for the respondent No. 5.

Matter pertains to provincialisation of Lal Bahadur Shastri M.E. School in the Dhemaji Education Block of Jonai Sub-Division, District-Dhemaji under the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017* as amended in 2018.

Though, the District Scrutiny Committee, Dhemaji recommended the name of the petitioner's school, namely, Lal Bahadur Shastri M.E. School for provincialisation of its teaching staff under the provisions of said 2017 Act as amended, but the State Level Scrutiny Committee after due verification rejected the recommendation for provincialisation of the said M.E. School under the said 2017 Act on finding that there is no such valid land document regarding ownership of land in the name of the said M.E. School.

Being aggrieved, the petitioner has preferred this writ petition.

During the deliberation of the matter, the petitioner from the annexures appended to this petition placed before the Court that the Deputy Commissioner, Dhemaji way back on 25.12.1995 indicate that the Land Advisory Committee of Dhemaji Sub-Division in its meeting held on 11.12.1995 approved the allotment of 5 Bighas of land in the name of the said M.E. School, District-Dhemaji. Pursuant to the same, the Deputy Commissioner, Dhemaji by his order under memo No. DRC-

II/75/95/13 dated 25.12.1995 issued an order of allotment of 5 Bighas of land at Dag No. 35 (*Kha*) Part at Balikata Miri Pathar, Mouza-Sissi, Circle-Sissiborgaon, District-Dhemaji observing that if the said allotted land is not utilized within a period of 2 (two) years, then said order of allotment of the land shall automatically stands revoked.

The petitioner has also annexed a copy of the certificate dated 14.02.2003 issued by the Circle Officer, Sissiborgaon Revenue Circle vide No. 103 regarding possession of said land by the petitioner's school.

Petitioner has also annexed similar certificates regarding possession of said allotted land by the petitioner's school issued by Circle Officer, Sissiborgaon Revenue Circle on 01.06.2017 and by the Additional Deputy Commissioner, Dhemaji on 10.04.2005.

In this petition, the petitioner has also annexed a certificate under No. DRS3/2005/34 dated 08.04.2013 issued by the Additional Deputy Commissioner, Dhemaji, wherein it is specified that the Circle Officer, Sissiborgaon Revenue Circle submitted a proposal for allotment of land measuring 5 Bighas covered by Dag No. 35 (*Kha*) at Balikata Miripather gaon map under Sissiborgaon Revenue Circle in the name of "Lal Bahadur Shastri M.E. School" and that the same is under process.

The said certificate of land issued by the Additional Deputy Commissioner, Dhemaji on 08.04.2013 also reflects that the said land is under possession of the said school since 1994 as per the report of the concerned Circle Officer.

The Director of Elementary Education, Assam respondent No. 3 has filed an affidavit in this matter clarifying the stand of the State Level Scrutiny Committee stating that though the District Elementary Education Officer, Dhemaji submitted a proposal along with the recommendation of the District Scrutiny Committee, Dhemaji for provincialisation of services of the teachers against Lal Bahadur Shastri M.E. School under the said 2017 Act, but after verification of the relevant records and considering Section 3(1)(iii) of the said 2017 Act, the case of the petitioner's M.E. School for provincialisation could not be approved.

Section 3 of the said 2017 Act as amended relates to eligibility criteria for selection of Educational Institution for provincialisation of services of Teachers/ Tutors.

Section 3 of the said 2017 Act provides different mandatory criteria for provincialisation of teaching and non-teaching staff of a Venture Educational Institution under the said 2017 Act.

Section 3(1)(iii) of the said 2017 as amended provides that – *the concerned Venture Educational Institution must have land in the name of the Institution with clear and exclusive title and possession over the land before 01.01.2006 and no lease or rent or donor agreement executed at any point of time, shall not be considered in any manner for this purpose:*

Provided that in case of institutions situated in Forest area, Forest Possession Certificate from the competent Forest Authority certifying that the institution has been in possession of Forest Land prior to 01.01.2006 and in case of institutions situated in Tea Gardens, certificate from Tea Garden Authority certifying that the institution has been in possession of Tea Garden Land prior to 01.01.2006, shall have to produce by the concerned educational institution before the District Scrutiny Committee constituted under Section 13.

Apparently, from the Annexures appended by the petitioner, more particularly, the Certificate No. DRS3/2005/34 dated 08.04.2013 issued by the Additional Deputy Commissioner, Dhemaji pertaining to the land of the petitioner's school clearly reveals that the proposal for allotment of land measuring 5 Bighas covered by Dag No. 35 (*kha*) at Balikata Miripather Gaon under Sissiborgaon Revenue Circle in the name of "Lal Bahadur Shastri M.E. School" was under process and this fact has been admitted by the petitioner's school.

Though, the petitioner's school is in possession of 5 Bighas of land covered by Dag No. 35 (*kha*) of Balikata Miripather Gaon under Sissiborgaon Revenue Circle, but from the said land certificate of the Additional Deputy Commissioner, Dhemaji dated 08.04.2013, it is clear that allotment of said 5 Bighas of land in the name of Lal Bahadur Shastri M.E. School as on 08.04.2013 was under process and that on 08.04.2013, the petitioner M.E. School did not have any clear and exclusive title over the said allotted land which is still under process.

Considering the above, the Court is of the view that the order of rejection of provincialisation of service of teaching and non-teaching staff of the said Lal Bahadur Shastri M.E. School under the provisions of the said 2017 Act as amended, without having clear and exclusive title over the land on or before 01.01.2006, does not call for any interference.

For the reasons above, the prayer of the petitioner made in this writ petition in exercise of the power under Article 226 of the Constitution of India cannot be considered.

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.”

If the petitioner in view of said Section 14 of the 2017 Act prefers any statutory appeal before the concerned Appellate Authority against the order of rejection of provincialisation of service of teaching and non-teaching staff of the said Lal Bahadur Shastri M.E. School, Dhemaji by the concerned State Level Scrutiny Committee under the said 2017 Act, the said authority shall consider such appeal of the petitioner in accordance with law.

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

JUDGE

Comparing Assistant