

GAHC010156022021



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

Case No. : WP(C)/5964/2021

SHAHANUR AHMED
S/O AMIR UDDIN AHMED
VILLAGE NO. 3, TUPAMARI, PO TUPAMARI, DIST KAMRUP, ASSAM, 781127

VERSUS

THE STATE OF ASSAM AND 3 ORS
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION, DISPUR GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP
ASSAM

4:THE DISTRICT SCRUTINY COMMITTEE
KAMRUP
REPRESENTED BY ITS CHAIRPERSON CUM DEPUTY COMMISSIONER
KAMRUP
ASSA

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-04-2023

Heard Mr. M. H. Ahmed, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Elementary) Education for the respondent Nos. 1 to 3. Also heard Mr. G. Bokolial, learned Government Advocate, Assam for the respondent No.4.

It is stated by the petitioner that pursuant to the resolution dated 07.08.2007, the petitioner, a Class-XII (10+2) pass candidate with Arabic was appointed as an Arabic Teacher in Tupamari ME Madrassa in the Chamaria Education Block of Kamrup District during its venture stage and accordingly, the Secretary of the said Madrassa on 08.08.2007 issued him an appointment order, pursuant to which, he joined the said service on 10.08.2007 and since then, he is serving in the said Madrassa.

It is also submitted by the petitioner that though his name was forwarded for provincialisation of his service under the provisions of the *the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017*, as amended, but the District Scrutiny Committee, Kamrup for Elementary Education did not consider his case for provincialisation under the said 2017 Act, as amended.

Petitioner submitted that he is a Language Teacher and 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).

By placing a copy of the list uploaded in its website by the Director of Elementary Education, Assam for provincialisation of teaching staff of such venture educational institutions under the provisions of said 2017 Act, the petitioner submitted that only 2 Teachers from the said venture Madrassa has been considered for provincialisation of their services under the said 2017 Act at Srl Nos. 331 and 332 and no such Language Teacher in said venture ME Madrassa has been provincialised as yet under the said 2017 Act.

Hence, this writ petition by the petitioner for a direction to the respondent authorities to consider his case for provincialisation of his service under the said 2017 Act as an Arabic Language Teacher in said Tupamari ME Madrassa.

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 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.*”

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

Such appeal shall be preferred by the petitioner by annexing a certified copy of

this order, including a copy of this writ petition including the Annexures appended thereto before the Secretary, Department of School Education (Elementary), Assam, on or before **05.05.2023** obtaining necessary acknowledgement from the said authority in that regard.

In the event of filing of such appeal by the petitioner before the Secretary, Department of School Education (Elementary), Assam as directed above, the authority concerned on perusal of the relevant records shall dispose of his said appeal by a reasoned order preferably within a period of 3 (three) months from the date of receipt of the said appeal from the petitioner, intimating him about the outcome of the same.

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

JUDGE

Comparing Assistant