

GAHC010156142022



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

Case No. : WP(C)/5325/2022

AKAN KALITA
SON OF LATE KUSHEWAR KALITA,
R/O VILLAGE- BISHNUPUR KALITA GAON,
P.O.- JAMUGURI PANCH ALI,
PIN- 787057,
DIST.- DHEMAJI, ASSAM.

VERSUS

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

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

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

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

5:THE DISTRICT LEVEL SCRUTINY COMMITTEE (DLSC)
REPRESENTED BY DEPUTY COMMISSIONER

PIN- 787057
ASSAM

Advocate for the Petitioner : MS. S DOLEY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

17-02-2023

Heard Ms. S. Doley, learned counsel for the petitioner and Mr. A. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1 to 4. Also heard Mr. G. Pegu, learned Government Advocate, Assam for the respondent No. 5.

It is submitted by the petitioner that Silputta Janajati M.E. School, Jamuguri, Panchali in the Dhemaji Education Block of District-Dhemaji was recommended for provincialisation under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 by the District Scrutiny Committee (Elementary), Dhemaji.

However, finding that there is no sufficient valid land documents to prove the land that in the name of said school, the State Level Scrutiny Committee rejected the recommendation of the District Scrutiny Committee (Elementary), Dhemaji and left out the said Silputa Janajati M.E. School from the benefit of provincialisation under the said 2017 Act.

Being aggrieved with the same, the petitioner has filed this writ petition on 05.08.2022 praying amongst others for direction to provincialise the said Silputta Janajati M.E. School, District-Dhemaji and the services of teachers serving in that school.

Ms. Doley, learned counsel for the petitioner submitted that a plot of land measuring 5 Bighas covered by Dag No. 90 (Kha) of No. 3 Raichapari (Part-I), Silputa Mishing Gaon under Dhemaji Revenue Circle, District-Dhemaji was approved in the name of said Silputta Janajati M.E. School by the Sub-Divisional Land Advisory Committee in its meeting held on 22.02.2002 and that said land is under

possession of the said school since 1995 as per the report of the Circle Officer, Dhemaji Revenue Circle, Dhemaji. Further, the Additional Deputy Commissioner, Dhemaji by its communication No. DRS 229/98 dated 30.04.2002 wrote to the Secretary to the Government of Assam in the Revenue (Settlement) Department about the proposal of allotment of said land in the name of the said school.

To that extent, the petitioner has annexed copies of (i) the Certificate of Land vide No. DRS/229/98/3427 dated 30.04.2013 issued by the Additional Deputy Commissioner, Dhemaji; (ii) the Land Possession Certificate vide No. DJC/C/1/2012-13/386 dated 29.04.2013 issued by the Circle Officer, Dhemaji Revenue Circle, Dhemaji and (iii) the communication No. DRS 229/98 dated 30.04.2022 issued by the Additional Deputy Commissioner, Dhemaji to the Secretary to the Government of Assam of Revenue (S) Department as Annexures- 8, 7, & 6 respectively to this petition.

The State Level Scrutiny Committee of Elementary Education represented by the Director of Elementary Education, Assam filed its affidavit on 09.01.2023 stating that though the District Scrutiny Committee (Elementary), Dhemaji recommended for provincialisation of services of teachers teaching in said School under the provisions of the said 2017 Act but the State Level Scrutiny Committee after verification found that said Silputta Janajati M.E. School does not have any record regarding allotment of land in its name and as such, as provided under the provisions of said 2017 Act, the services of teaching staff of said school could not be provincialised.

It is seen that the petitioner has not annexed the land allotment order of the Government in the Revenue Department allotting any such land in the name of the petitioner's school.

Section 3 of the said 2017 Act provides for "*Eligibility criteria for selection of educational institution for provincialisation of services of teachers/tutors*".

One of such eligibility criteria for provincialisation *of services of teachers/tutors* as provided under the provisions of said 2017 Act, is 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 be produced by the concerned educational institution before the District Scrutiny Committee constituted under Section 13."

Though the petitioner by placing Annxure-7 i.e., the Land Possession Certificate dated 29.04.2013 issued by the Circle Officer, Dhemaji Revenue Circle, Dhemaji regarding possession of 5 Bighas land covered by Dag No. 90 (Kha) of No. 3 Raichapari (Part-I), Silputa Mishing Gaon under Dhemaji Revenue Circle, District- Dhemaji but it has not annexed any such certificate stating the Schedule of land that is allotted in the name of the petitioner's school where it has clear and exclusive title and possession as required under the provisions of Section 3 of the said 2017 Act.

Section 14 of said 2017 Act relates to "Appellate Authority" which stipulates 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."

After hearing the learned counsels for the parties and considering the entire aspect of the matter, this writ petition is disposed of directing the petitioner to prefer a statutory appeal before the Secretary to the Government of Assam in the Department of School (Elementary) Education as provided under Section 14 of said 2017 Act as amended **on or before 15.03.2023** along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

In the event of filing such statutory appeal by the petitioner within the time so specified, the Secretary to the Government of Assam in the Department of School (Elementary) Education on verification of the relevant records, shall dispose of the said statutory appeal of the petitioner with a reasoned order within a period of 90 (ninety) days after giving an opportunity of hearing to the petitioner intimating him about the outcome of said appeal.

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

JUDGE

Comparing Assistant