

GAHC010209782021



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

Case No. : WP(C)/5307/2021

REZZAQUL HUSSAIN
S/O- LT. NAYAN ALI
VILL- BANJARAPARA
P.O. GAREMARI
DIST.- BARPETA
ASSAM
PIN- 781311

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE HIGHER EDUCATION DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-6

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REP. BY THE DY. COMMISSIONER BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

4:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

5:THE PRINCIPAL OF JANAPRIYA COLLEGE
BANJARAPARA

P.O. GAREMARI
DIST.- BARPETA
ASSAM
PIN- 781314
6:THE GOVERNING BODY OF JANAPRIYA COLLEGE
BANARAPARA
REP. BY ITS PRESIDENT
P.O. GAREMARI
DIST.- BARPETA
ASSAM
PIN- 781314
7:BABUL HOSSAIN
S/O- ASHRAF ALI
VILL- BANARAPARA
P.O. GAREMARI
DIST.- BARPETA
ASSAM
PIN- 781314
8:ABUL KALAM AZAD
S/O- LT. MAZIBOR RAHMAN
VILL- SONAPUR
P.O. BALIKURI
DIST.- BARPETA
ASSAM
PIN- 781319

Advocate for : MR. A R SIKDAR

Advocate for : SC

HIGHER EDU appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

03/01/2023

Heard Mr. A R Sikdar, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned Standing counsel, Higher Education Department for the respondent Nos. 1 & 2; Mr. S R Baruah, learned Government Advocate, Assam for the respondent Nos. 3 & 4 and Mr. M U Mondal, learned counsel for the respondent No. 7.

Pursuant to a resolution adopted by the Governing Body of Janapriya College, Banarapara,

District-Barpeta, the Principal-cum-Secretary of said Janapriya College on 15.03.2006 appointed the petitioner as a Library Assistant in the said college during its venture stage pursuant to which, the petitioner joined his service on 16.03.2006.

In pursuance of the Government sanctioned order No. AHE.416/2020/73 dated 01.02.2021, though the Director of Higher Education, Assam by order under No. PC/HE/Prov./2/2021/1 dated 05.02.2021 provincialised the services of 11 serving employees of said Janapriya College, Baniarapara, District-Barpeta under Section 4(1) of the Assam Education (Provincialisation of Services of Non-teaching staff of Venture Educational Institutions) Act, 2018, but the said provincialisation order did not include the name of the petitioner and the respondent authorities disregarding his seniority, provincialised the service of the respondent No. 7 as Library Assistant in the said Janapriya College, who joined the said college only on 09.12.2006, much later than the petitioner.

Being aggrieved with such provincialisation of the respondent No. 7 as Library Assistant in said Janapriya College by the impugned order dated 05.02.2021 issued by the Director of Higher Education, Assam, the petitioner has preferred this writ petition praying amongst others to set aside the impugned order of provincialisation dated 05.02.2021 issued by the DHE, Assam so far as it relates to provincialisation of the respondent No. 7; to declare and hold that he is the senior most employee of the said college in the category of Library Assistant and to hold him senior above the private respondent No. 8 and further, to provincialise his service as a Library Assistant in said Janapriya College, Baniarapara, District-Barpeta.

During the deliberation of the matter, Mr. Sikdar, learned counsel for the petitioner, on instructions, submitted that the petitioner does not have the requisite qualification to be appointed as an Assistant Librarian in said Janapriya College, Baniarapara, District-Barpeta.

On instructions, Mr. Sikdar, learned counsel for the petitioner further submitted that one Saleha Khatun, whose service was provincialised by the impugned order dated 05.02.2021 as Junior Assistant of the said Janapriya College, expired after provincialisation of her service and as such, the petitioner may be considered for provincialisation of his service against the said vacant post considering his service in the said college since 16.03.2006.

The Court, while issuing notice to the respondents on 06.10.2021, in the interim passed an order not to give the effect of provincialisation to the respondent No. 7 in terms of said order dated 05.02.2021 issued by the DHE, Assam until further order.

The respondent No. 7 on 06.12.2021 filed the connected interlocutory application, being I.A. (Civil) 2218/2021 for vacating the said interim order dated 06.10.2021 passed in the present proceeding.

It is seen that the petitioner submitted a representation before the Commissioner & Secretary to the Govt. of Assam in the Higher Education Department on 26.02.2021 for not considering his case for provincialisation, but provincialising the service of the respondent No. 7 by the impugned order dated 05.02.2021.

Section 8 of the *Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2018* as amended provides for statutory appeal which stipulates as follows:-

“*Appellate Authority:-*

The State Level Scrutiny Committee shall be the appellate authority in respect of any recommendation of the District Scrutiny Committee and the State Government in the concerned administrative department shall be the Appellate Authority in respect of any recommendation of the State Level Scrutiny Committee.”

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the petitioner is directed to prefer an appeal before the Commissioner & Secretary to the Govt. of Assam in the Higher Education Department of the State against such order of provincialisation dated 05.02.2021 issued by the DHE, Assam for redressal of his grievances in not provincialising his service under the said 2017 Act.

Such statutory appeal shall be preferred by the petitioner before the concerned authority of the State Government in the Higher Education Department on or before 20.01.2023 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 appeal by the petitioner, as directed above, within the time so fixed, the concerned Appellate authority shall dispose of the same within a period of 60 (sixty) days from the date of receipt of the said appeal with a reasoned order, giving an opportunity of hearing to the petitioner as well as the respondent No. 7 and on verification of the relevant records and if so required, also giving an opportunity of hearing to the authorities of the District Scrutiny Committee for

Higher Education, District- Barpeta as well as the Director of Higher Education, being the Chairman of the State Level Selection Committee. The concerned Appellate authority shall intimate the petitioner as well as the respondent No. 7 about the outcome of the said appeal to be preferred by the petitioner, as directed above.

However, it is clarified that in the event, the concerned Appellate authority comes to the conclusion that the provincialisation of service of the respondent No. 7 as Library Assistant in said Janapriya College, Baniarapara, District-Barpeta in terms of the impugned order dated 05.02.2021 issued by the Director of Higher Education, Assam is valid, in that circumstances, the respondent No. 7 shall be paid his salary, both arrear and regular from the date of provincialisation of his service w.e.f. 01.01.2021 deducting the salary already paid to him.

Till such decision of the said statutory Appellate Authority, the order of provincialisation of the service of respondent No. 7 under the said 2018 Act shall be kept in abeyance.

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

JUDGE

Comparing Assistant