

GAHC010161592021



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

Case No. : WP(C)/5326/2021

ZAKIR HUSSAIN AHMED
S/O HAYAT ULLAH SHEIKH, VILL-AIRANJONGLA PT.III, P.O.-AIRANJONGLA,
P.S.-DHUBRI, DIST- DHUBRI, ASSAM, PIN-783323

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION DEPARTMENT (ELEMENTARY),
DISPUR, GUWAHATI-6

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI-6

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

4:THE DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
DHUBRI
REPRESENTED BY ITS CHAIRMAN
THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN-783301

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
GAURIPUR
DIST-DHUBRI
ASSAM
PIN-783331

7:SIDDIQUE MAHAMMED FARUQUE
S/O MINHAZ UDDIN AHMED
VILL-AIRANJONGLA PT.III
P.O.-A.M. CO. ROAD
DIST-DHUBRI
ASSAM
PIN-783323

8:FARHANA AHMED
W/O REZAUL ISLAM SARKAR
VILL-CHOTO BOZRA
P.O.-HAZIRHAT
P.S.-SUKCHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78312

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20-02-2023

Heard Mr. R. Islam, learned counsel for the petitioner and Mr. A. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2, 5 & 6. Also heard Mr. G. Bokolial, learned Government Advocate, Assam for the respondent Nos. 3 & 4 and

Mr. A.T. Sarkar, learned counsel for the respondent No. 7.

Matter pertains to provincialisation of service of the petitioner under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

It is stated that the petitioner, the respondent No. 7 and the respondent No. 8 were appointed as Assistant Teachers of Doikhowapara M.E. Madrassa in the Gauripuri Education Block of District-Dhubri during its venture stage. However, disregarding the better claim of the petitioner, the service of the respondent No. 7 was provincialised as a 'tutor' (Science) and the service of the respondent No. 8 was also provincialised as a 'tutor' (Science) in terms of the order under No. EPD-16 Provn-UP (Act 2017)/2021-2213 dated 05.02.2021 issued by the Director of Elementary Education, Assam being approved by the State Government in the Elementary Education Department.

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

The petitioner submitted that the services of the four teachers namely, (i) Abu Taher Ahmed; (ii) Farhana Ahmed (respondent No. 8), (iii) Halima Khatun and (iv) Siddque Mohammad Faruque (respondent No. 7), were provincialised on 05.02.2021 in the school in question and that except Abu Taher Ahmed though he is senior to the other three teachers including the respondent Nos. 7 & 8, their services have been provincialised by the respondent authorities on 05.02.2021.

The petitioner also submitted that the District Scrutiny Committee (DSC) (Elementary) Dhubri recommended the names of Abu Taher Ahmed and that of the respondent No. 7 as Language Teachers whereas Halima Khatun as Social Science Teacher and Farhana Ahmed as Science Teacher of said Madrassa.

The petitioner stated that he joined the said Doikhowapara M.E. Madrassa as a Hindi Teacher on 20.04.2005 during its venture stage and his name appeared in the DISE Code from the year 2009 upto 2021, whereas the respondent No. 7 joined the said Madrassa on 28.09.2007 and the

respondent No. 8 joined the said Madrassa on 14.12.2010, but the DSC (Elementary) Dhubri inspite of the records being available before it, did not recommend his name.

The petitioner also stated that he filed an appeal on 20.09.2021 before the Principal Secretary to the Government of Assam in the Elementary Education Department which is presently pending for consideration.

Mr. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam placed before the Court a copy of the communication under No. EPD/H/134/2022/54 dated 13.07.2022 of the Director of Elementary Education, Assam.

From the said communication dated 13.07.2022, it is seen that the DSC (Elementary) Dhubri recommended the names of said Abu Taher Ahmed as Language Teacher; Halima Khatun as Social Studies Teacher, Siddique Mohammed Faruque as Language Teacher and Farhana Ahmed as Mathematics & Science Teacher.

It is also seen that the petitioner was also shown as 4th Language Teacher in the said school and the services of the respondent Nos. 7 & 8 along with that of Abu Taher Ahmed and Halima Khatun were provincialised under the provisions of said 2017 Act as per the recommendation of the DSC (Elementary) Dhubri.

The Court while issuing notice to the respondents on 06.10.2021 directed the respondent authorities not to give effect of provincialisation to the respondent No. 7 until further order.

Though notice in this case was issued on 06.10.2021 but the respondent authorities did not file any affidavit in the matter. However, the DEE, Assam placed the communication dated 13.07.2022, noted above before the Court today.

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 as well as the respondent Nos. 7 and 8 intimating all of them about the outcome of the said appeal.

Till such decision of the concerned appellate authority in the said appeal of the petitioner, the respondent authorities shall not give any effect of provincialisation to the respondent No.7 provided under the said 2017 Act as amended.

However, while considering the said appeal, if the petitioner is found to be eligible for provincialisation following the provisions of said 2017 Act as amended, the respondent authorities in the Elementary Education Department shall provincialise his service from the date of provincialisation of the other teachers of said Doikhowapara M.E. Madrassa in the Gauripuri Education Block of District-Dhubri giving him all such financial and other service benefits as applicable under the law.

Similarly, if the appellate authority finds that the service of the respondent No. 7 was rightly provincialised, his service shall be provincialised giving all benefits of provincialisation from the date when other teachers of the said Madrassa got the benefit of provincialisation.

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

Copy of the communication dated 13.07.2022 of the Director of Elementary Education, Assam

placed before the Court today by Mr. A. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam, be kept as a part of the record.

JUDGE

Comparing Assistant