

GAHC010161712021



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

Case No. : WP(C)/1252/2022

ABDUL HOQUE
S/O. LT. ISMAIL HUSSAIN, VILL. SONTOLI SATRA, P.O. MAHTOLI, DIST.
KAMRUP, ASSAM, PIN-781136

VERSUS

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

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY.-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

KAMRUP
DIST. KAMRUP
ASSAM.

4:THE DISTRICT SCRUTINY COMMITTEE

KAMRUP REP. BY ITS CHAIRPERSON CUM DY. COMMISSIONER KAMRUP
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

08-02-2023

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

The petitioner is a Higher Secondary passed with Arabic as one of the subject. Being eligible, he was appointed as an Arabic Teacher on 24.07.1991 by the School Managing Committee of Rangapani Choudhurypam Anchalik M.E. Madrassa, a venture educational institution in the Chamaria Education Block of Kamrup District. Accordingly, on 01.08.1991, he joined in said school as an Arabic Teacher during its venture stage.

It is stated by the petitioner that though his case was placed before the District Scrutiny Committee (DSC) for Elementary, District-Kamrup but the said DSC did not recommend his name for provincialisation of his service.

It is also stated by the petitioner that he received financial assistance as provided by the State Government in the Elementary Education Department but the respondent authorities in Elementary Education Department did not recommend his name and by the notification No. EPD-46/2017/Pt-I/42 dated 04.02.2021, the Director of Elementary Education, Assam notified the names of three other teachers of said Rangapani Choudhurypam Anchalik M.E. Madrassa for provincialisation of their services as "tutors".

Being aggrieved with said notification dated 04.02.2021 issued by the DEE, Assam, noted above, the petitioner has filed this writ petition on 29.09.2021 praying for a direction to the respondent authorities to provincialise his service as an Arabic Teacher in the said Madrassa with all service benefits w.e.f. the date on which the services of other employees of said school have been provincialised.

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

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."

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 forthwith 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 from the date of receipt of such appeal after giving an opportunity of hearing to the petitioner intimating him about the outcome of said

appeal.

However, in that process if the petitioner is found to be eligible for provincialisation following the provisions of said 2017 Act, the respondent authorities in the Elementary Education Department shall provincialise his service from the date of provincialisation of the other teachers of said Rangapani Choudhurypanam Anchalik Madrassa, District-Kamrup giving him all such service benefits as applicable under the law.

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

JUDGE

Comparing Assistant