

GAHC010111392021



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

Case No. : WP(C)/5522/2021

MD. CHERAG ALI
S/O MD. ANOWAR ALI
VILLAGE BANGALPARA
PO BHELKAR
DIST KAMRUP (R) ASSAM
781102

VERSUS

THE STATE OF ASSAM AND 6 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY
ELEMENTARY EDUCATION DEPARTMENT
DISPUR GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAMKAHILIPARA
GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
KAMRUP DADARA
DIST KAMRUP (R) ASSAM
781104

4:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
HAJO. DIST KAMRUP (R) ASSAM 781104

5:THE HEADMASTER OF BARLUIT M.E MADRASSA
PO TAPABARI DIST KAMRUP (R) ASSAM
781102

6:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM DIRECTOR OF ELEMENTARY
EDUCATION ASSAM
KAHILPARA GUWAHATI 19

7:THE DISTRICT SCRUTINY COMMITTEE.
FOR ELEMENTARY EDUCATION
REPRESENTED BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
KAMRUP (R) AMINGAON
GUWAHATI 781031

Advocate for : MR. A MANNAF
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-05-2023

Heard Mr. A. Mannaf, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School Education for the respondent Nos. 1, 2, 3, 4 and 6. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent No.7.

2) Pursuant to the resolution dated 11.02.1999, the Managing Committee of Barluit ME Madrassa, Gendhalitary, Bhelkarbazar in the Hajo Education Block of District-Kamrup appointed the petitioner as an Arabic Teacher. Pursuant to the same, the petitioner joined the said Madrassa on 25.02.1999 during its venture stage.

3) Though the services of six teaching staff of the said Madrassa have been provincialised against 222 number of students in the said ME Madrassa under the provisions of *the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017*, as amended, but the petitioner has been left out from provincialisation as 2nd Arabic Teacher in that Madrassa.

4) It is stated that the petitioner submitted representation before the Director of Elementary Education, Assam on 16.03.2021. As it has not yet been considered, the petitioner being aggrieved has preferred this writ petition.

- 5)** The petitioner submitted that as per the provisions laid down under Section 3 (1) (XI) of the said 2017 Act and the norms and standards stipulated in the Schedule as provided under Sections 19 and 25 of the Right of Children to Free and Compulsory Education, Act, 2009, considering the enrollments of students in said Barluit ME Madrassa, there is requirement of provincialisation of additional teacher in the said Madrassa which has already been complied with pertaining to similarly situated teachers of venture educational institutions in Kamrup (Metro) and Nalbari Districts considering the existing enrollments.
- 6)** The petitioner submitted that the District Scrutiny Committee (Elementary), Kamrup though aware of the enrollments of students in said Madrassa, did not recommend his name for provincialisation.
- 7)** Being aggrieved, the petitioner has preferred this writ petition.
- 8)** 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).

- 9)** 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."

- 10)** 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."

11) As there is a statutory provision of appeal under the said 2017 Act, the petitioner is directed to prefer an appeal before the Secretary, Department of School (Elementary) Education, Assam as provided under Section 14 of said 2017 Act as amended, on or before **25.05.2023** for redressal of his grievances along with a certified copy of this order, a copy of this writ petition including the Annexures appended thereto obtaining necessary acknowledgement from the said authority in that regard.

12) In the event of filing of such appeal by the petitioner before the Secretary, Department of School (Elementary) Education, Assam as directed above, within the time so specified, the said authority on verification of relevant records in original and after giving an opportunity of hearing to the petitioner shall dispose of the said appeal of the petitioner within ninety days from the date of its receipt by a reasoned order, intimating him about the outcome of his said appeal.

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

JUDGE

Comparing Assistant