

GAHC010169162021



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

Case No. : WP(C)/5486/2021

NURUZ ZAMAN
S/O. LT. ABDUL MALEK, VILL. SINGARI,
P.O. SINGARI MADRASSA, DIST. NAGAON, ASSAM, PIN-782124.

VERSUS

1: THE STATE OF ASSAM AND 2 ORS REP. BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION
DEPTT., DISPUR, ASSAM, GUWAHATI-781006.

2: THE DIRECTOR OF ELEMENTARY OF EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019.

3: THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON ASSAM PIN-782001

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 19-12-2023

Heard Mr. J. Abedin, learned counsel for the petitioner. Also heard Mr. P.K. Borah, learned standing counsel, Education (Elementary) Department, representing all the respondents.

The petitioner was appointed as an Assistant (Section) Teacher on 29.01.1995 in Tokoubari Bhakatgaon P.K. Deka Anchalik M.E. School, Kachamari,

Nagaon. The petitioner has been continuing in the said capacity since the date of his appointment. The petitioner has contended that the School in question is an Assamese Medium School and he is the only teacher available to teach Assamese.

The said institution was considered under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as "the 2017 Act") and the cases of the eligible teachers of the said School were placed before the District Scrutiny Committee. On such consideration being made, the recommendations of the District Scrutiny Committee were forwarded by the District Elementary Education Officer, Nagaon to the Director of Elementary Education, Assam for being placed before the State Level Scrutiny Committee.

From the materials available on record, including the affidavit filed by the Director of Elementary Education, Assam, it is seen that the District Scrutiny Committee had recommended the name of 6(six) teachers, including the petitioner herein, for provincialisation of their services. Thereafter, the State Level Scrutiny Committee, on examining the matter, came to a conclusion that the enrollment in the School was 159 students during 2016-17 as per DISE Data, proceeded to recommend the names of 5(five) teachers for provincialisation. The name of the petitioner was dropped from the said list. It is relevant to mention here that the recommendations made by the State Level Scrutiny Committee in respect of the teachers of the said School keeping the enrolment status at 159 students, led to the teachers in the School being provincialised as "Tutors". In spite of the fact that there was an enrollment of 159 students, the State Level Scrutiny Committee did not follow the Schedule appended to the Right to Free and Compulsory Education Act, 2009 (hereinafter

referred to as “the RTE Act, 2009”), wherein it has been said that for Class-VI to Class-VIII School, there must be at least 1(one) teacher for every 35 students and where the enrollment of students rises above 100, a full-time Headmaster is called for.

In the case in hand, the incumbent in the post of Headmaster of the School in question at its venture stage was not provincialised as the Headmaster of the School but came to be provincialised as a Tutor, leading to which the case of the petitioner came to be dropped. It is also the contention of Mr. J. Abedin, learned counsel for the petitioner that the enrollment status of the students, as worked out, has not been so worked out in terms of the provisions of the 2017 Act and the RTE Act, 2009. In the event provisions of the said Acts were applied, the enrollment would have been at a higher stage than what has been now disclosed by the respondent authorities.

In view of the above position, this Court requires the petitioner to submit a representation before the Secretary to the Government of Assam, Department of School Education, staking his claim for provincialisation of his services as Teacher/Tutor in the School in question and therein shall bring on record the actual enrollment of the students in the School from 2009-2010 onwards. The petitioner shall also highlight before the said authority the provisions of the RTE Act, 2009, more particularly, the Schedule thereto, wherein the norms and standards for a School under Sections 19 and 25 of the RTE Act, 2009 have been laid out. The Secretary to the Government of Assam, Department of School Education, on receipt of the representation of the petitioner along with a certified copy of this order shall cause a verification of the facts as would be revealed by the petitioner in his representation and also would take into consideration the provisions of the Schedule to the RTE Act,

2009, which mandates for an Upper Primary School to have a post of Headmaster in the event the enrollment rises above 100. On coming to a conclusion in the matter with regard to the issues highlighted above, the Secretary, Department of School Education shall arrive at a decision as to whether the School in question is eligible for sanction of a post of Headmaster and if a post of Headmaster is decided to be created and one of the incumbent in the School is allowed to hold the post, the case of the petitioner be considered for provincialization against the post that would become vacant on 1(one) of the Tutors being elevated to the post of Headmaster. In the event the case of the petitioner is required to be considered by the State Level Scrutiny Committee, the case may accordingly be placed before the State Level Scrutiny Committee for its recommendation. The entire exercise that has been directed to be carried out hereinabove shall be initiated and carried out within a period of 3(three) months from the date of receipt of a certified copy of this order.

With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant