

GAHC010076232022



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

Case No. : WP(C)/5516/2021

ANWARA BEGUM BARBHUIYA
W/O- HILAL UDDIN MAZUMDER
VILL.- MOHANPUR R.A.
P.O. RATANPUR
DIST.- HAILAKANDI
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY
ELEMENTARY EDUCATION DEPARTMENT
GOVT. OF ASSAM
DIPSUR
GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-19.

3:STATE LEVEL SCRUTINY COMMITTEE
REP. BY ITS CHAIRMAN CUM DIRECTOR ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19.

4:DISTRICT SCRUTINY COMMITTEE FOR ELEMENTARY EDUCATION
HAILAKANDI
REP. BY ITS CHAIRMAN CUM DEPUTY COMMISSIONER
HAILAKANDI
ASSAM

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
DIST.- HAILAKANDI
ASSAM

6:BLOCK ELEMENATRY EDUCATION OFFICER
HAILAKANDI
ASSAM

7:ZAKIR HUSSAIN BARBHUIYA
HEAD MASTER
SURAJ ALI LASKAR M.E. SCHOOL
VILL.- MOHANPUR R.A.
P.O. RATANPUR
DIST.- HAILAKANDI
ASSAM

PIN- 788155.
8:SAHAB UDDIN LASKAR
ASST. TEACHER SURAJ ALI LASKAR M.E. SCHOOL
VILL.- MOHANPUR R.A.
P.O. RATANPUR
DIST.- HAILAKANDI
ASSAM
PIN- 788155.

Advocate for : MR E AHMED
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 7 ORS.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-02-2023

Heard Mr. E. Ahmed, learned counsel for the petitioner and Ms. N. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1, 2 & 5. Also heard Mr. G. Pegu, learned Government Advocate, Assam for the respondent Nos. 3 & 4 and Mr. F.A. Laskar, learned counsel for the respondent No.7.

Being eligible, the petitioner was appointed as an Additional Teacher by the School Managing Committee (SMC) of Suraj Ali Laskar M.E. School, District-Hailakandi, a venture educational institution. Pursuant to the resolution dated 05.01.2010, the SMC of said School decided to adjust her to the post of Assistant Teacher-II on 25.01.2010. Since then, she is serving as an Assistant Teacher of Social Studies in it.

Petitioner contended that though her case was placed before the District Scrutiny Committee (Elementary Section) District-Hailakandi but while the process of provincialisation of the service of the teaching staff of said Suraj Ali Laskar M.E. School, District-Hailakandi was undertaken under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 amended in 2018, the said DSC in its meeting held on 31.12.2018 recommended the names of the respondent No. 7 as Headmaster of said school who taught English and the respondent No. 8 as an Assistant Teacher of Bengali along with another Assistant Teacher of Science and Mathematics violating the provisions of Section 3 (1)(xi) of said 2017 Act.

Being aggrieved with such action on the part of the respondent authorities, the petitioner filed this writ petition on 06.10.2021 praying for a direction to the respondent authorities to set aside the impugned recommendation dated 31.12.2018 of the DSC (Elementary Section), District-Hailakandi.

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 submit 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 as directed above, 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 & 8, intimating her about the outcome of her said appeal.

However, in the meanwhile, the petitioner is found to be eligible for provincialisation in terms of the provisions of said 2017 Act, the respondent authorities in the Elementary Education Department shall provincialise her service from the date of provincialisation of the other teachers of said Suraj Ali Laskar M.E. School, District-Hailakandi, giving her all such financial and other service benefits as per his entitlement in accordance with law.

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

JUDGE

Comparing Assistant