

GAHC010178802021



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

Case No. : WP(C)/5787/2021

BARNALI BARUAH
W/O SRI ASHIM SARMA,
RESIDENT OF BOR BANG. BAMUN PARA, PATHSALA, DIST BAJALI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, DISPUR GUWAHATI
781006

2:THE DIRECTOR OF SECONDARY EDUCATION DEPARTMENT

ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE INSPECTOR OF SCHOOL

BARPETA DISTRICT CIRCLE
BARPETA
ASSAM

4:THE DEPUTY COMMISSIONER CUM CHAIRMAN

DISTRICT SCRUTINY COMMITTEE
BARPETA
ASSAM

5:THE PRINCIPAL
ANCHALIK COLLEGE (JR.) BONGAON

781375
DIST BARPETA
ASSA

Advocate for the Petitioner : MR. S HAZARIKA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 28.06.2023

Heard Mr.S.Hazarika, learned counsel for the petitioner. Also heard Mr. N.J.Khtaniar, learned standing counsel, Secondary Education for respondent Nos. 1, 2 and 3 and Mr. G.Pegu, learned Govt. Advocate for respondent No.4.

2. The petitioner was appointed as a second Teacher in the subject Assamese at Anchalik College (Junior) Bongaon in the district of Barpeta. It is stated that the first teacher in Assamese subject namely, Kalyan Ch. Talukdar had resigned from service on 20.04.2018. Accordingly, petitioner claims that she is entitled to be provincialised against the post of Teacher in Assamese in the said College. After the enactment of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions), Act 2017, (Act of 2017 in short), steps were taken for provincialisation of the teaching and non-teaching staff of the various colleges and schools in the State of Assam. The District Scrutiny Committee in its meeting held on 08.04.2019 recommended the case of the petitioner for provincialisation in the Assamese subject against the Anchalik College (Junior) Bongaon. Thereafter, the State Level Scrutiny

Committee rejected the case of the petitioner for provincialisation. On the basis of an RTI, application, the petitioner was informed that the case of the petitioner was not considered for provincialisation as her name would not be located in the DISE under Barpeta district.

3. The learned counsel for the petitioner submit that under the Act of 2017, particularly with regard to Venture Junior College/Venture Higher Secondary Schools, the DISE is not mandatory and therefore, the case of the petitioner could not have rejected on the ground that her name did not appear in the DISE. The learned counsel has also placed reliance in the Order dated 12.04.2023 passed by this Court in WP(C)/1353/2022 where it has been held that the name of the teachers should be captured in the DISE CODE of 2009-10 is contrary to the Act of 2017 particularly with reference to Venture High School/Venture Higher Secondary Schools and Venture Junior Colleges.

4. In WP(C)/1353/2022, this Court by the order dated 12.04.2023 held as under:

“12. From a perusal of the said Section, it is apparent that only in respect to Venture Primary or Upper Primary Schools, there is the requirement of having DISE Code for the year 2009-10 or prior to that. 13. Section 4 stipulates the requirement when the services of teachers and/or tutors of all venture educational institutions eligible under Section 3 of the Act of 2017 shall be deemed to have been provincialised on the date of publication of the provincialisation order by notification in the Official Gazette. Section 4 (2) mentions the relevant criteria which are required to be fulfilled for teachers/tutors to be provincialised under the Act of 2017. Section 4 being relevant is quoted herein under:- "4 (1) Subject to fulfillment of all other provisions of this Act, the services of the teachers and/or tutors of all Venture Educational Institutions eligible

under section 3 shall be deemed to have been provincialised on the date of publication of the provincialisation order by Notification in the Official Gazette and they shall become employees of the State Government with effect from such date. 4. (2) The teachers and/or tutors to be provincialised under this Act: (i) must have been working as a teacher in the concerned Venture Educational Institution that have been fully recognized up to the last and highest class required for such Institution by the competent authority on or before 01.01.2006; (ii) must have minimum educational and professional qualifications as laid down under different Acts, Rules and Regulations as mentioned under section 6 or any other relevant statutory provisions, as the case may be; (iii) must have rendered at least six years continuous service as on 1.1.2017 from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior to that date. (iv) in case of teachers and/or tutors of the Schools for special subject like Sanskrit, Arabic, Hindi, Craft Teacher, Music . Teacher and other Classical Teachers, the number of students appeared in the concerned final examination like HSLC and HS (10 + 2) conducted by the SEBA or the ASHEC, as the case may be, shall not be less than 10 students in each class per year during last three years. 14. From the above quoted provision, it transpires that the services of teachers or tutors subject to fulfillment of all other provisions of the Act of 2017 shall be deemed to have been provincialised on the date of publication of the provincialisation order by Notification in the official Gazette and they shall become employees of the State Government with effect from such date. Section 4 (2) of the Act of 2017 stipulates the fulfillment of various criteria. In terms with Clause (i) of Section 4 (2) of the act of 2017, the teacher and/or tutor must have been working as a teacher in the concerned Venture Educational Institution as mentioned in Section 3 (1) (i) that have been recognized by the competent authority on or before 01.01.2006. The said teacher and/or tutor in terms with Clause (ii) must have minimum educational and professional qualifications as laid down under different Acts, Rules and Regulations as mentioned in Section 6 or any other relevant statutory provisions, as the case may be. The teachers and/or tutors in terms with Clause (iii), whose services are required to be provincialised must also have rendered at least 6 years continuous service as on 01.07.2017 from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior

to that date. Sub-Clause (iv) of Section 4 (2) deals with those teachers and/or tutors in respect to special subjects like Sanskrit, Arabic, Hindi, Craft Teacher, Music Teacher and other Classical Teachers in respect of whom the number of students appeared in the concerned final examination like HSLC and HS (10 + 2) conducted by the SEBA or the ASHEC, as the case may be, shall not be less than 10 students in each class per year during last three years. This Section also do not envisage the requirement of the names of teachers of "Venture High School" or "Venture Higher Secondary School" to be captured in the DISE Code. 15. Section 6 of the Act of 2017 deals with the educational and professional qualification of teachers whereas Section 7 of the Act of 2017 deals with the educational and professional qualification of tutors. 16. Therefore, a conjoint reading of the provisions referred to hereinabove in respect to the Act of 2017 there is no requirement for the names of the teachers working in the "Venture High School" as well as "Venture Higher Secondary School" as defined in Section 2 (x) and 2 (y) of the Act of 2017 to have their names captured in the DISE Code as is otherwise required in the case of a teachers/tutors whose services are to be provincialised in respect of "Venture ME School" and "Venture Lower Primary School" as well as "Venture Upper Primary School" as defined in Sections 2 (za), 2 (zb) and 2 (zc) of the Act of 2017 wherein the names of such teachers or tutors are required to be captured in the DISE Code up to 2009-10. 17. In the backdrop of the above, let this Court take into consideration the case of the petitioners before this Court in the present batch of writ petitions. The learned counsel for the petitioners has submitted that the concerned respondent authorities have not processed the proposals for provincialisation of the services of the petitioners who are working in "Venture High Schools" and "Venture Higher Secondary Schools" on the ground that the petitioners' names are not captured in the DISE Code. It is also the case of the petitioners that the concerned authorities have issued communication not to process such proposals of provincialisation of services of teachers/tutors whose names have not been captured in the DISE Code. 18. This Court, on the basis of the above analysis of the provisions of the Act of 2017, is of the opinion that the insistence of the respondent authorities of the names of petitioners who have been rendering services in "Venture High School" and "Venture Higher Secondary School" to be captured in the DISE Code of 2009-10 is contrary to the Act of

2017 as it is not the mandate of the Act of 2017 to fulfill such requirement in respect to such teachers and/or tutors working in "Venture High School" and "Venture Higher Secondary School" to have their names captured in the DISE Code upto 2009-10. Such insistence is arbitrary and contrary to the provisions of the Act of 2017 and accordingly interfered with."

5. Upon consideration of the order dated 12.04.2023 passed in WP(C)/1353/2022 and the facts and circumstances of the present case in hand, I am of the considered opinion that the case of the present petitioner is squarely covered by the order dated 12.04.2023, passed in WP(C)/1353/2022.

6. Accordingly, this writ petition is disposed of with a direction to the concerned respondent authority, particularly, the Director of Secondary Education to consider the case of the petitioner for provincialisation of her service as Teacher/Tutor by making verification in terms of Section 4 of the Act of 2017 and without insisting that her name should be captured in the DISE CODE of 2009/2010 as prior to thereto.

7. Let such exercise be completed within a period of 2(two) months from the date of receipt of a copy of the order of this Court.

8. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant