

GAHC010180422023



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

Case No. : WP(C)/4686/2023

AMALANGSHU DAS
S/O- LATE MONORONJAN DAS, VILLAGE- SEUIT PART-I, P.O. BIHARA
BAZAR, P.S. KATIGORAH, DIST. CACHAR, PIN- 788817.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-
06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI-22.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

CACHAR DISTRICT
P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

KATIGORA
P.O. AND P.S. KATIGORAH
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

11/09/2023

Heard Mr. H R Choudhury, learned counsel for the petitioner and Mr. N J Khataniar, learned Standing counsel, Department of School Education for all the official respondent Nos. 1 to 4.

2. As per the provisions of Right to Education Act, 2009 and pursuant to the advertisement dated 14.02.2012 issued by the Mission Director, Sarba Siksha Abhijan (SSA), Assam, on being selected, the petitioner was engaged as an Assistant Teacher in Upper Primary (Maths and Science) Schools in the District of Cachar on contractual basis at a fixed pay of salary of Rs.15,200/- per month including leave and other allowances as per the State Government norms issued from time to time with the observation that instead of General Provident Fund (GPF), the petitioner shall be entitled to the benefit of Contributory Pension Fund (CPF). Accordingly, pursuant to his appointment order dated 19.05.2012 issued by the Mission Director, SSA, Assam, the petitioner joined his service at Gorervitor M.E. School under Katigorah Education Block of District-Cachar and has been rendering his duty in the said school.

3. It is stated by the petitioner that later he was attached to Hilara Block Headquarter M.E. School and is discharging his duties therein.

4. It is stated that as per the approval of the District Level Committee, Cachar and the subsequent approval of the Department of School Education, Govt. of Assam under No. E-250013 dated 07.08.2023, the Director of Elementary Education, Assam by its order No. E-250013/525 dated 07.08.2023 transferred the petitioner from Gorervitor M.E. School to Salimabad Binapani M.E. School in the District of Cachar in the interest of the students in compliance with the provisions of Right to Education Act, 2009 and as per the provisions of the Government Office Memorandum on Rationalisation dated 05.05.2023 at their own Grade and Pay and other allowances as admissible under the Rules specifying that there will be no TA/DA admissible for the said purpose of transfer. Being aggrieved with the said order of transfer of the petitioner from Gorervitor M.E. School to Salimabad Binapani M.E. School in the District of Cachar issued by the DEE, Assam on 07.08.2023, the petitioner has preferred this writ petition.

5. Petitioner contended that the said order dated 07.08.2023 reflects that the regular teacher will join in their new places of posting as specified in the said order of the DEE, Assam dated 07.08.2023, whereas the petitioner is only a contractual teacher under the SSA, Assam.

6. The State Government in the Education Department has brought into force the *Assam Elementary and Secondary School Teachers' (Regulation of posting and transfer) Act, 2020* that came into force w.e.f. 26.05.2020, the date on which it was published in the Assam Gazette Extraordinary.

7. The State Government in the Education Department brought into force the said 2020 Act to manage posting and transfer of teachers of Elementary and Secondary Schools according to the requirement of Teachers in a School in order to maintain proper Pupil Teacher Ratio (PTR).

8. The preamble of the said 2020 Act stipulates that –

“Whereas it is expedient to provide for the responsibility of the State Government to manage posting and transfer of Teachers of Elementary and Secondary Schools according to the requirement of Teachers in a School in order to maintain proper Pupil Teacher Ratio (PTR) norms prescribed in the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) and rules framed and norms laid down thereunder, for ensuring optimum utilization of manpower for effective academic support to the students and for prevention of adverse effect on academic activities in Schools.”

9. Section 2(b) of the said 2020 Act relates to 'Category or Cadre' which means *different Category of Teachers working in the State, like Principal, Vice-Principal, Head Master, Assistant Head Master, Assistant Teachers, Intermediate Teachers, Graduate Teachers, Post Graduate Teachers, Fixed pay Teachers, Contractual Teachers, Additional Teachers, Craft Teachers, Music Teachers, Tutors etc.*

10. Section 2(p) of the said 2020 Act defines 'Teacher' which means *all Teachers or Tutors of both Elementary and Secondary Schools drawing salary or fixed pay or honorarium from the Government exchequer or from Samagra Siksha Abhiyan, Assam excluding Heads of School.*

11. From the reading of the provisions of Sections 2(b) and 2(p) of the said 2020 Act, it is cleared that even a contractual teacher drawing salary or fixed pay or honorarium from the Government exchequer serving under the Sarba Siksha Abhiyan, Assam is liable to be transferred under the provisions of the said 2020 Act in order to maintain proper Pupil Teacher Ratio even in Elementary Schools including the Upper Primary Schools as per the provisions of the Right of Children to Free and

Compulsory Education Act, 2009 and the Assam Right of Children to Free and Compulsory Education Rules, 2011.

12. Considering the above, this Court is of the view that even though the petitioner is a contractual teacher with a fixed pay of salary under the Sarba Siksha Abhijan, Assam, he is entitled to transfer under the provisions of the said 2020 Act.

13. Accordingly, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant