

GAHC010183582021



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

Case No. : WP(C)/5875/2021

GANESH KALITA
S/O- LT. DHANI RAM KALITA, R/O- VILL- GARAMDEW, P.O. GARAMDEW
UNDER BAKSA DISTRICT, SUBJECT TEACHER OF GEOGRAPHY, THAMNA
ANCHALIK SENIOR SECONDARY SCHOOL

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-6

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE DIRECTOR OF EDUCATION
B.T.C
KOKRAJHAR
ASSAM
PIN-

5:THE DISTRICT SCRUTINY COMMITTEE
REP. THROUGH ITS CHAIRMAN
THE DY. COMMISSIONER
BAKSA DISTRICT
ASSAM
PIN-

6:THE INSPECTOR OF SCHOOL
B.D.C
MUSHALPUR
DIST.- BAKSA
ASSAM
PIN-

7:ARUP KUMAR KALITA
PRINCIPAL
THAMNA ANCHALIK SENIOR SECONDARY SCHOOL
BAKSA
DISTRICT
ASSAM

8:KANDARPA KR. RAJBONGSHI
SUBJECT TEACHER OF GEOGRAPHY
THAMNA ANCHALIK SENIOR SECONDARY SCHOOL
BAKSA
DISTRICT
ASSAM - 78137

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

15.02.2023.

Heard Ms. A Bujarbaruah, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2, 3 & 6. Also heard Ms. R B Bora, learned Standing counsel, BTC for the respondent No. 4 as well as Mr. G Bokalial, learned Government Advocate, Assam for the respondent No. 5.

Matter pertains to provincialisation of the service of the petitioner as Post Graduate Teacher/Tutor of Geography in Thamna Anchalik Senior Secondary School, District-Baksa under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

The petitioner obtained Master Degree in Geography from Gauhati University in the year 2000 and also obtained B.Ed. Degree from Bajali Teachers Training College, Patacharkuchi under the Gauhati University in the year 2001.

The Assam Higher Secondary Education Council on 28.09.1995 granted permission to start higher secondary section classes in Arts to the then Thamna Anchalik College with the subjects of English, MIL (Assamese), Advance Assamese, History, Political Science, Economics, Education, Geography, Mathematics, Statistics and Sanskrit.

By Corrigendum dated 16.02.1999, the Assam Higher Secondary Education Council granted recognition to Thamna Anchalik Senior Secondary School, District-Baksa for the Science stream with the subjects of English, MIL (Assamese), Advance Assamese, History, Political Science, Economics, Education, Geography, Mathematics, Statistics, Logic and Philosophy and Sanskrit.

The School Managing Committee of said Thamna Anchalik College renamed as Thamna Anchalik Senior Secondary School, during its venture stage on 22.12.2003 appointed the petitioner as Subject Teacher/Lecturer of Geography on honorary basis in the said school, pursuant to which, the petitioner joined the said school on 23.12.2003 and since then the petitioner is rendering service in it.

While taking up the cases of the teaching and non-teaching staff of said Thamna Anchalik Senior Secondary School, District-Baksa, the District Scrutiny Committee (Secondary), Baksa on 04.03.2020 recommended the name of the petitioner for provincialisation of his service as an additional Geography Subject Teacher along with one Kandarpa Kumar Rajbongshi who joined the said school on 10.11.1993, on the basis of the enrolment numbers for the years 2014, 2015 & 2016.

On the approval of the State Government in the Secondary Education Department dated 29.01.2021 and 03.02.2021, the Director of Secondary Education (DSE), Assam vide order No. PC/Sec/Prov./35/2021/10 dated 04.02.2021 provincialised the service of said Kandarpa Kumar Rajbongshi as a Tutor of Geography in the said senior secondary school under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 as amended in 2018 w.e.f. 01.01.2021. But the said order of the DSE, Assam dated 04.02.2021, noted above, did not

contain the name of the petitioner, in spite of the recommendation of the District Scrutiny Committee, Baksa.

Being aggrieved, the petitioner has preferred this writ petition on 01.11.2021 praying amongst others, for a direction to the respondent authorities to consider his case for provincialisation of his service as a Subject Teacher of Geography in said Thamna Anchalik Senior Secondary School, District-Baksa.

Section 14 of said 2017 Act provides for 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.”

By filing an additional affidavit on 28.10.2022 the petitioner has brought to the notice of the Court that he preferred an appeal before the Chairman of the State Level Scrutiny Committee on 19.10.2022 to consider his case for provincialisation of his service as Subject Teacher of Geography in said Thamna Anchalik Senior Secondary School, District-Baksa.

Considering the submissions made in this writ petition by the petitioner, it is clear that the case of the petitioner was considered by the District Scrutiny Committee, Baksa for provincialisation of his service as a Tutor, but the State Level Scrutiny Committee did not recommend his name for provincialisation under the 2017 Act.

As such, as per the provisions of the Statutory Appeal prescribed in the said 2017 Act, the petitioner is required to prefer an appeal before the State Government in the concerned Administrative Department for not considering his recommendation by the State Level Scrutiny Committee.

The Hon'ble Supreme Court in the case of *Commissioner of Income Tax and Another -Vs- Chhabil Dass Agarwal* reported in (2014) 1 SCC 603 have held that “*when a statutory forum is created by law for redressal of grievances, writ petition should not be*

entertained ignoring said statutory provision"

In view of the above, the petitioner shall prefer an appeal against such non-recommendation of the State Level Scrutiny Committee disregarding his claim for provincialisation for the Additional post of Subject Teacher of Geography in said Thamna Anchalik Senior Secondary School, Baksa before the Secretary to the Department of School (Secondary) Education, Assam on or before 15.03.2023., 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, within the time so specified, the Secretary to the Department of School (Secondary) Education, Assam 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 intimating him about the outcome of said appeal.

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

JUDGE

Comparing Assistant