

GAHC010185412021



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

Case No. : WP(C)/5938/2021

ABDUS SATTAR SK
S/O LATE MEHAR ALI
VILLAGE PALASH KANDI, PO GRAHAMPUR, PS TAMARHAT, DIST
DHUBRI, ASSAM, 783334

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION DEPARTMENT (ELEMENTARY) DISPUR , ASSAM,
781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM KAHILIPARA
GUWAHATI 19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI ASSAM

4:THE DISTRICT SCRUTINY COMMITTEE
DHUBRI REPRESENTED BY THE DEPUTY COMMISSIONER
DHUBRI
ASSAM

5:SMTI ASHIA BHUYAN
W/O FAIJUL HOQUE CHOWDHURY.
VILLAGE SRIRAMPUR (NEAR POST OFFICE)
PO AND PS SRIRAMPUR
DIST KOKRAJHAR
BTAD ASSAM 78336

Advocate for the Petitioner : MR. P K DEKA
Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

20-03-2023

Heard Mr. P.K.Deka, learned counsel for the petitioner and Mr. P.K.Borah, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2 & 3. Also heard Mr. G. Pegu, learned Government Advocate, Assam for the respondent No. 4 and Mr. P. Nath, learned counsel for the private respondent No. 5.

It is submitted by the petitioner that since 05.01.1997, he is rendering his duty as a Headmaster in Palashkandi M.E.School in the Agomoni Education Block of Dhubri district during its venture stage.

It is also submitted by the petitioner that though the respondent No. 5 joined the said school as an Additional Teacher on 23.02.2007 which is much later than the petitioner but the District Scrutiny Committee (Elementary Education), Dhubri District recommended her name for provincialisation of service under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

The said recommendation of the DSC, Dhubri was subsequently approved by the State Level Committee and by order under No. EPD-46/2017/Pt-I/42 dated 04.02.2021 of the Director of Elementary Education, Assam, the service of the respondent No. 5 was provincialised as tutor under the said 2017 Act.

Being aggrieved with such decision of the respondent authorities in provincialising the service of the respondent No. 5 under the provisions of said 2017 Act, disregarding the seniority of the petitioner and his better claim, the petitioner has preferred this writ petition.

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 **on or before 10.04.2023** as provided under Section 14 of said 2017 Act as amended 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 No. 5, intimating him about the outcome of his said appeal.

It is made clear that if in such process, the petitioner is found to be eligible for provincialisation in terms of the provisions of said 2017 Act, noted above, the respondent authorities in the Elementary Education Department shall provincialise his service from the date of provincialisation of the other teachers of said Palashkandi M.E.School, giving him 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