

GAHC010171692022



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

Case No. : WP(C)/4894/2023

WACHEL ALI AHMED
SON OF LT. MD. ASHRAF ALI
VILL- SATRA KANARA 15 NO. SEAT
P.O. SATRA KANARA
P.S. BAGHBAR
DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
SCHOOL EDUCATION DEPARTMENT
DISPUR
GUWAHATI-06

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
DIST.- DARRANG
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
MANDIA EDUCATION BLOCK
P.O.- MANDIA
DIST.- BARPETA
ASSAM

5:THE MISSION DIRECTOR

SARBA SIKSHA ABHIYAN

KAHILIPARA

GUWAHATI-19

6:THE DISTRICT MISSION CO-ORDINATOR

SARBA SIKSHA ABHIYAN

BARPETA

DIST.- BARPETA

ASSAM

7:THE DISTRICT LEVEL SCRUTINY FOR ELEMENTARY EDUCATION

BARPETA

DIST.- BARPETA

ASSAM (TO BE REPRESENTED BY ITS CHAIRMAN-CUM-DEPUTY

COMMISSIONER

BARPETA

DIST. BARPETA

ASSAM

8:THE STATE LEVEL SCRUTINY COMMITTEE

ASSAM

(TO BE REPRESENTED BY ITS CHAIRMAN-CUM-THE DIRECTOR

ELEMENTARY EDUCATION

ASSAM

KAHILIPARA-19)

9:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE T.M.P.J.

ME MADRASSA

(TO BE REPRESENTED BY ITS SECRETARY-CUM-HEADMASTER OF T.M.P.J.

ME MADRASSA

VILL- TEDHARA PATHER

P.O. MANDIA)

10:THE HEADMASTER

T.M.P.J ME MADRASSA

VILLAGE- TEDHARA PATHER

P.O.- MANDIA

PIN CODE- 781308

DISTRICT- BARPETA

Advocate for : MR. A R BHUYAN

Advocate for : SC

SSA appearing for THE STATE OF ASSAM AND 9 ORS

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 07.12.2023

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. P. K. Borah, learned standing counsel, Elementary Education Department, Government of Assam.

The petitioner by way of instituting the present proceeding; has raised the grievance against non-consideration of his case for provincialization as a Teacher of T.M.P.J. ME Madrasa, on the ground that in the relevant DISE Code and the data thereon, does not contain the name of the petitioner “Wachel Ali Ahmed”.

Raising the said grievance, the petitioner had approached this Court by way of instituting a writ petition being WP(c)3305/2022 which was given a final consideration vide order, dated 25.05.2022. This Court, in the said order, by taking note of the clarification, dated 21.09.2021, issued by the District Mission, SSA, Barpeta, to the effect that it was the petitioner who was working in the said school since 2009 and no teacher by the name of “Wahed Ali”; the person whose name figures in the Dias Code data from 2009-10 to 2011-2012, had worked in the school, remanded back the matter to the Director, Elementary Education Department, Government of Assam, for a fresh consideration.

The consideration that was directed to be so made, was to be made by taking into account the said communication, dated 21.09.2021. In terms of the direction passed by the Court, vide order, dated 25.05.2022; the Director, Elementary Education Department, Government of Assam, considered the matter, passed order, dated 12.04.2023, observing and concluding therein, as under:

“In view of the above, it reveals that as the DSC, Barpeta recommend 3 nos. of Teachers against T.M.P.J. MEM.

On the other hand, the Joint Committee decided to verify the DISE data of the proposed schools and teachers only which were already submitted earlier and as such the name of the petitioner Wached Ali Ahmed was not recommended for provincialization of services as per Act, 2017, due to non-appearance of his DISE up to 2011-12 maintained by NEUPA, New Delhi. Therefore, the MD, SSA, Assam requested to submit the DISE Verification report regarding appearance of his name of the petitioner up to the year 2011-12 but this time also SSA, Assam furnish the report in which this petitioner name is also not appear in DISE up to 2011-12.

Thereafter being aggrieved for non-provincialization of services of Wachel Ali Ahmed filed a case before the Hon'ble High Court vide order dtd. 25/05.2022 in W.P.(C)3305/2022 and as per direction of the Hon'ble High Court. The DEE, Assam again requested the MD, SSA, Assam regarding appearance of petitioner name in DISE data against T.M.P.J. MEM vide letter No. EPD/H/150/2022/119, dtd. 05/08/2022. In response to this office letter the SSA, Assam has submitted the DISE(NEUPA) verification report vide letter SSA/MIS/DISE Code/Dhubri/116/2014/Pt-III/1720, dtd. 22/08/2022 in which the name of petitioner Wachel Ali Ahmed is not found to appear in DISE data up to the year 2011-12.

Hence, the claim of the petitioner, Wachel Ali Ahmed for provincialization of services against T.M.P.J MEM cannot be considered and thereby rejected.”

The above conclusions as reached by the Director, Elementary Education Department, Government of Assam, in the said order, dated 25.05.2022, was so reached basing on the materials made available before her by the SSA, Assam, but it is found that the direction of this Court to also take into consideration, the said communication, dated 21.09.2021, was not taken into account. Accordingly, the directions passed by the Court, vide order, dated 25.05.2022, has not been complied with in the correct perspective.

In view of the above, we require the Director, Elementary Education Department, Government of Assam, to re-visit the order, dated 12.04.2023, and pass a fresh order after taking into account, the observations made by the Court in paragraphs No. 4, 5 & 6, of the order, dated 25.05.2022, passed in WP(c)3305/2022.

It is clarified that the remand for re-consideration is being passed only on account of the fact that the above noted communication, dated 21.09.2021, was not taken into account and not on account of the fact that any of the materials relied upon by the said authority for arriving at the conclusions, as contained in the order, dated 12.04.2023, has been doubted because the said order was not considered on merit but it was only considered on account of non-consideration of the communication, dated 21.09.2021, while passing the said order.

The Director, Elementary Education Department, Government of Assam, after taking into consideration the materials already available on record along with the said communication, dated 21.09.2021, shall pass a fresh order.

The exercise required to be carried upon, shall be carried out within a period of 1(one) month from the date of a certified copy of this order.

The order, dated 12.04.2023, shall be kept in abeyance and the same shall be governed by a fresh speaking order in terms of the directions passed by the Court.

The writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant